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REPUBLIC OF THE PHILIPPINES

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VICE President and concurrently Secretary of Foreign Affairs Elpidio Quirino, on behalf of the Republic of the Philippines, and Ambassador Paul V. McNutt, for the United States, on November 16 signed the Treaty on Conciliation between the two countries and the Air Agreement. The conclusion of the treaty, the Vice President explained, imposes a solemn obligation upon both governments not to resort to any means other than friendly, peaceful and legal in the adjustment of any problems that might arise between the Philippines and the United States, while the Air Agreement assures Philippine air companies absolute equality with American airlines.

ARRIVALS in Manila during the month were:

Lieutenant Colonel Jesus A. Villamor, Filipino hero of the Pacific war, by plane from the United States on November 25.

General Thomas T. Handy, Deputy Chief of Staff, General Staff, United States War Department, by plane from Tokyo on November 25, in the course of an inspection tour of the Pacific.

Major General George F. Moore, veteran of Corregidor, by plane from Tokyo on November 16, to assume his duties as new Commanding General of AFWESPAC.

United States Assistant Secretary of the Navy W. John Kenney and a staff of high ranking naval officers, by plane from the United States on November 13, for a tour of the Philippines in connection with post-war problems and naval supplies.

Commissioners Frank A. Waring and Francisco Delgado, of the United States-Philippine War Damage Commission, and key members of their staff, by plane from the United States on November 1, to start organization of the offices of the Commission throughout the Philippines.

PRESIDENT and Mrs. Roxas on November 16 honored Vice President Quirino with a state dinner at Malacañan on the occasion of his birthday.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 23

AMENDING SECTION 2 OF EXECUTIVE ORDER No. 3, DATED JULY 10, 1946, ENTITLED "ON THE CONTROL OF EXPORTS FROM THE PHILIPPINES."

By virtue of the powers vested in me by law, I, Manuel Roxas, President of the Philippines, do hereby amend section 2, of Executive Order No. 3, dated July 10, 1946, to read as follows:

"SEC. 2. The exportation from the Philippines of all other products, merchandise, articles, materials, and supplies is hereby permitted upon a specific export license to be issued by the Philippine Sugar Administration covering each individual shipment. The permit shall be signed "By authority of the President." For every application for an export license, a fee of two pesos; and for every export license issued, a license fee of five pesos shall be charged for each one thousand pesos of the declared value of the products, merchandise, articles, materials and supplies covered by the license, or fraction of said value amounting to five hundred pesos or more; *Provided*, That the license fee for each license issued shall in no case exceed fifty pesos. The amount of license fees collected pursuant to the provisions hereof shall be kept as a special fund to be spent by the Philippine Sugar Administration for the enforcement of this order."

Done at the City of Manila, this 1st day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 24

CREATING THE NATIONAL ADVISORY HEALTH COUNCIL

WHEREAS, the advice and counsel of capable and experienced men in the fields of public health, sanitation and medicine are essential to enable the Administration to cope with the complex problems that the integrated health service has to solve and to evaluate medical progress;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law do hereby create a body to be known as the National Advisory Health Council to study problems of public health and sanitation and to make such recommendations as it may deem necessary for the improvement of public health and sanitation and the promotion of medical research. The Council shall be composed of the following:

The Secretary of Health and Public Welfare	Chairman
Director, Bureau of Quarantine Service	Member
Chairman, Board of Medical Examiners	Member
President, Philippine Medical Association	Member
Dean, College of Medicine, University of the Philippines	Member
Dean, College of Medicine, University of Santo Tomas	Member
Dr. Florentino Herrera	Member
Dr. Pedro Velasco	Member
Dr. Lorenzo Macaisa	Member
Dr. Antonio Fernando	Member
Dr. Guillermo Rustia	Member
Dr. Agustin Liboro	Member

The members of the Council, except the ex-officio members whose term shall be co-terminous with their tenure in their regular positions, shall serve without compensation for a period of one year.

The Council may designate an executive secretary from among those already in the service under the Department of Health and Public Welfare who shall receive a per diem for each day of session to be determined by the Council with the approval of the President.

The Council may appoint standing and special committees which shall be composed of members and/or non-members of the Council.

The Council shall meet on call of the Chairman as often as he may determine and shall submit to the President of the Philippines reports of its accomplishments and recommendations as often as it shall desire.

The sum of ₱10,000 is hereby set aside from the appropriation authorized in item 8, page 36, Republic Act No. 80, for the operating expenses of the Council.

Done at the City of Manila, this 12th day of November, in the year of Our Lord, nieteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 25

CHANGING THE MEMBERSHIP OF THE FLOOD CONTROL COMMISSION CREATED IN EXECUTIVE ORDER No. 68, DATED DECEMBER 1, 1936.

The Flood Control Commission, created in Executive Order No. 68, dated December 1, 1936, is hereby reconstituted, to be composed of the following:

The Undersecretary of Public Works and Communications	Chairman
The Director of Public Works	Member
The Director of Forestry	Member
The Manager of the Metropolitan Water District	Member
The Manager of the National Power Corporation	Member

The second paragraph of the aforesaid Executive Order No. 68, dated December 1, 1936, is hereby amended accordingly.

Done at the City of Manila, this 15th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 26

AMENDING EXECUTIVE ORDER No. 304, DATED OCTOBER 8, 1940, ENTITLED "CREATING INVESTIGATING COMMITTEES ON VETERANS' PENSION, REQUIRING PROVINCIAL, CITY AND MUNICIPAL TREASURERS TO PERFORM CERTAIN DUTIES IN CONNECTION WITH SUCH PENSION AND ENJOINING ALL OFFICERS AND EMPLOYEES OF THE PHILIPPINE GOVERNMENT TO RENDER NECESSARY ASSISTANCE TO APPLICANTS THEREFOR."

Pursuant to the powers vested in me by law, I, Manuel Roxas, President of the Philippines, do hereby amend paragraphs 1, 2, and 4 of Executive Order No. 304, dated October 8, 1940, to read as follows:

"1. An Investigating Committee on Veterans' Pension is hereby created in every province and chartered city. In the provinces the Investigating Committee on Veterans' Pension shall be composed of the following:

The Provincial Treasurer, Chairman
The District Health Officer, Member
The Provincial Auditor, Member

In chartered cities, the Investigating Committee shall be composed of the following:

The City Treasurer, Chairman
The City Health Officer, Member
The City Auditor, Member

The Board on Pensions for Veterans is hereby authorized to create such additional Investigating Committees as it may deem necessary in the provinces and cities that have extraordinarily large numbers of applicants, each committee to be composed of such government officials and a veteran as it may designate. The Investigating Committee on Veterans' Pension created or to be created under this Order shall, under the direction of the Board on Pension for Veterans and in accordance with rules which the latter shall prescribe, investigate all the applications for pension and supplementary information sheets filed by veterans residing in the municipalities and/or chartered cities assigned to them."

"2. For the purposes of Commonwealth Act No. 605, the Municipal Treasurers of all municipalities are hereby charged with the duty of receiving for the Board on Pensions for Veterans the applications for pensions and supplementary information sheets filed by veterans residing in their respective municipalities and chartered cities, and other papers in connection with pensions of veterans, and of keeping them until called for by the Chairman of the Provincial Investigating Committee, and of performing such other functions as may be assigned to them by the Board."

"4. All officers and employees of the different branches, subdivisions, agencies, and instrumentalities of the Philippine Government are likewise directed to assist in every possible way, free of charge, any veteran-applicant who may solicit their aid in connection with the preparation and presentation of applications for veterans' pension."

Done at the City of Manila, this 15th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 27

CREATING THE SURPLUS PROPERTY COMMISSION TO TAKE CHARGE OF THE ACCEPTANCE, ADMINISTRATION, SALE AND DISPOSITION OF THE SURPLUS PROPERTY ACQUIRED BY THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM THE GOVERNMENT OF THE UNITED STATES OF AMERICA.

WHEREAS, in the Agreement between the Government of the United States of America and the Government of the Republic of the Philippines entered into on September 11, 1946, the United States agreed to sell and grant and the Philippines agreed to buy and accept all that property owned by the United States on the effective date thereof but surplus to its needs in the Philippines, with the exceptions and limitations therein set forth;

WHEREAS, Republic Act No. 33 authorizes the President of the Philippines to create or designate an agency or instrumentality to accept and administer the surplus properties acquired under said Agreement, and to sell or dispose of so much of such surplus properties as may not be needed by the Government, its subdivisions and instrumentalities, including government-owned or controlled corporations, under such terms and conditions as may be deemed most advantageous;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by the Constitution and section 2 of Republic Act No. 33, do hereby

create and constitute a commission to be known as the Surplus Property Commission which shall be composed of a Chairman and two members to be appointed by the President.

The Surplus Property Commission shall have the following powers, functions and duties:

(*a*) To accept all the properties sold and granted and those that shall hereafter be sold and granted to the Philippines pursuant to the Agreement between the United States of America and the Philippines entered into on September 11, 1946;

(*b*) To provide for the care, custody, and protection of all such properties;

(*c*) To administer all the properties acquired under the said Agreement and to sell or dispose of so much of such properties as may not be needed by the Government, its subdivisions and instrumentalities, including government-owned or controlled corporations, under such terms and conditions as may be deemed most advantageous. To promote the rehabilitation of industry, business, and agriculture, sales shall be made to as large a number of people as possible and preference or priority shall be given in the sales to local manufacturers, businessmen, and farmers. Sales with a consideration of over ₱100,000 shall not be final, until approved by the President.

(*d*) To appropriate by special budget and with the approval of the President from the proceeds of the sales of such properties the necessary amount or amounts for the administration and custody of such property and for the operating expenses of the Commission;

(*e*) To appoint and fix the salaries of the executive officer of the Commission and the heads of the service units thereof, and upon the recommendation of the heads of service units concerned, to appoint and fix the salaries of all other officials and subordinate personnel of the Commission;

(*f*) To enter into contracts and to sue and be sued;

(*g*) To submit to the President a weekly report of sales and transactions.

The different bases wherein surplus properties are located shall, in so far as practicable, be provided with parallel organizations. Each base shall have a local committee composed of one member from the locality and two other members.

All departments, bureaus, and offices of the Government, its agencies and instrumentalities, including the corporations owned or controlled by the Government and the local governments shall extend, upon the request of the Commission, such assistance and facilities as the latter may need in the performance of its work.

Officials and employees of the Government, its agencies and instrumentalities, including those of the corporations owned or controlled by the Government as well as those of local governments, who may be called upon and are appointed to serve under the Surplus Property Commission shall, during the period of their service therein, be paid such salaries as may be fixed by the Commission, and they

shall be paid from funds of the Commission. Their duties may be discharged by the temporary assignment or designation of persons already in the service, and the persons so designated or assigned shall, in addition to the salary of their own positions, be entitled to receive the difference between such salary and that authorized by law for the position temporarily vacated by the incumbent assigned to the Surplus Property Commission.

The proceeds of all sales made by the Surplus Property Commission, except as otherwise appropriated in accordance with paragraph (*d*) above, shall be deposited in the Philippine National Bank to the credit of a special fund to be used exclusively for the purposes directed by law.

The Government Procurement Commission created by Executive Order No. 85, dated January 7, 1946, is hereby abolished and all its functions, properties, records, funds, appropriations and personnel are hereby transferred to the Surplus Property Commission herein created.

Done at the City of Manila, this 18th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 28

DIRECTING THE METROPOLITAN TRANSPORTATION SERVICE (METRAN) TO FURNISH TRANSPORTATION FACILITIES TO BUREAUS AND OFFICES OF THE NATIONAL GOVERNMENT.

For the purpose of carrying into effect section 15 of Republic Act No. 80 which prohibits the use of any appropriation therein authorized for the operation and maintenance of motor vehicles, except as specifically enumerated, I, Manuel Roxas, President of the Philippines, by virtue of the authority vested in me by the Constitution and existing laws, do hereby direct that the Metropolitan Transportation Service (METRAN) shall hereafter furnish motor transportation service to all bureaus and offices of

the National Government on hire or rental basis in accordance with the following schedule of rates:

Kind of transportation	Rate
Jeep	₱2.00 for first ½ hour
	3.00 for first hour
	2.50 for each succeeding hour
Five-passenger car	₱3.00 for first ½ hour
	4.50 for first hour
	3.50 for each succeeding hour
Six to eight-passenger car	₱3.50 for first ½ hour
	5.50 for first hour
	4.50 for each succeeding hour

Leases by the week shall be based on a charge of 12-hour use daily less 30 per cent discount.

For provincial trips—an additional ₱1 per hour.

Hereafter, any bureau or office desiring motor transportation shall make the necessary requisition therefor from the Metropolitan Transportation Service (METRAN). Such transportation shall be available solely for official purposes. Official transportation shall not be withheld for longer than the time of actual need. Except as may expressly be authorized by the President upon recommendation of the corresponding Head of Department, no official transportation shall be assigned for the exclusive use of any office or official. Calls for transportation shall be recorded on a travel order form which shall show the inclusive hours of travel, the places visited, and the purposes of the trips made.

All motor vehicles of the Government held or operated by the different departments, bureaus and offices, including their accessories, spare parts, existing stocks of fuels and lubricants, except the vehicles assigned for the use of the officials and personnel specified in section 15 of Republic Act No. 80, shall be transferred to the Metropolitan Transportation Service (METRAN) which shall pay the determined depreciated cost of such motor vehicles in installments within a period not exceeding three years.

For the purpose of appraising the reasonable cost at which said motor vehicles shall be transferred to the Metropolitan Transportation Service (METRAN), there is hereby created a committee composed of the Undersecretary of Public Works and Communications as chairman, and the General Manager of the Metropolitan Transportation Service (METRAN) and a representative of the Auditor General as members. The committee shall use as basis in their appraisal the actual net cost at which the motor vehicle was purchased from the Government Procurement Commission or elsewhere, deducting therefrom reasonable

depreciation charges on account of the use to which the motor vehicle had or might have been subjected.

The Metropolitan Transportation Service (METRAN) shall employ all drivers, chauffeurs, chauffeur-mechanics, and motorcycle drivers occupying positions carried in Commonwealth Act No. 723 as re-enacted in Republic Act No. 1, but eliminated in Republic Act No. 80.

This Order shall take effect immediately.

Done at the City of Manila, this 22nd day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 29

PROVIDING FOR THE ADMINISTRATION AND DISPOSITION OF PROPERTIES OR PROPERTY RIGHTS IN THE PROVINCE AND IN THE CITY OF DAVAO TRANSFERRED TO THE REPUBLIC OF THE PHILIPPINES BY THE UNITED STATES OF AMERICA UNDER THE PHILIPPINE PROPERTY ACT OF 1946, AND OTHER PROPERTIES OF THE GOVERNMENT THEREIN SITUATED WHICH ARE NOW BEING ADMINISTERED BY THE BUREAU OF LANDS.

WHEREAS, Republic Act No. 8 authorizes the President of the Philippines to designate an existing office, agency or instrumentality of the Government to take over and administer the properties and property rights transferred to the Republic of the Philippines by the United States of America under the Philippine Property Act of 1946 (Act of Congress of July 3, 1946), and to dispose of the same in accordance with the provisions of existing laws;

WHEREAS, a good portion of the properties, real or personal, and property rights which have been transferred or may be transferred to the Republic of the Philippines

by the United States of America under the Philippine Property Act of 1946 (Act of Congress of July 3, 1946) consist of properties, real and personal, and property rights situated in the Province of Davao and in the City of Davao, formerly held by Japanese nationals;

WHEREAS, it would be advantageous from the standpoint of efficiency and economy that the office, agency or instrumentality designated to administer the properties and property rights above mentioned should also administer other properties of the Government situated in the Province of Davao and in the City of Davao which are at present being administered by the Bureau of Lands;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by vritue of the powers vested in me by law, do hereby order:

1. The National Abaca and Other Fibers Corporation, created under Commonwealth Act No. 322, is hereby designated as the agency to take over and administer the properties and property rights located in or affecting properties situated in the Province of Davao and in the City of Davao, transferred to the Republic of the Philippines by the United States of America under the provisions of the Philippine Property Act of 1946 (Act of Congress of July 3, 1946), and to administer the abaca and coconut plantations on public lands formerly covered by lease to Japanese and other private parties, which leases have already expired, which plantations are more particularly listed in the attached Annex A, except such portion or portions thereof as may be reserved for agricultural experimental stations or agricultural schools.

2. The properties and property rights to be taken over and administered by the National Abaca and Other Fibers Corporation pursuant to the provisions of this Order shall be disposed of in accordance with the provisions of existing laws.

Done at the City of Manila, this 25th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

ANNEX A

List of Plantations Administered by the Bureau of Lands

Name of administrator	Plantation	Assigned portion	Area in hectares
1. Claro Reyes Panlilio (hours), Inc.	Daliao Plantation Co.	A	231
2. Pedro Limjoco	Daliao Plantation Co.	B	386
3. Pioneer's Development Co.	Biao Plantation Company (Add.)	Entire	568
4. Carmen Soriano	Catalunan Agricultural Company	Entire	121
5. David Jacobson	Lahi River Plantation Company	A and B	333
6. Minda Development Co.	Manambulan Development Company	Entire	667
7. Oriental Development Company	Mindanao Agricultural and Commercial Company	Entire	528
8. Jose Ledesma	Bato Plantation Co.	A	340
9. Ricardo Ledesma	do.	B	308
10. Robert Eric Baugh	do.	C	280
11. William Baugh	Bayabas Plantation Company	Entire	310
12. Abelardo Y. Jalandoni	Biao Plantation Co. (Orig)	A and B	208
13. Occidental Development Co. (Oscar Lagman—Representative)	Guianga Plantation Co.	Entire	334
14. Davao Gulf Development Co. (Capt. Stevens—Representative)	Gui Hing Plantation Co.	A, B, C	264
15. Pilar D. Veloso	Matsuoka Development Co.	A	210
16. Natividad Q. Noel	Matsuoka Development Co.	B	140
17. Benato Locsin (now Cesar Locsin)	do.	E	130
18. Cesar Locsin	do.	F	120
19. Augusto Locsin (now Cesar Locsin)	do.	G	150
20. Salvacion D. Buyco	North Talomo Plantation Co.	A	58
21. Flora C. Oliver	do.	B	63
22. Candido Abrina	Panavo Plantation Co.	A	216
23. Silvestre Gavina	do.	B	195
24. Sofronio Gonzalez	Sirawan Plantation Co.	Entire	149
25. Jose Lucero	Tagum Plantation Co.	A	349
26. Juan Abear	Tagum Plantation Co.	B	330
27. Eduardo Torres	Talomo River Plantation Co.	A and B	292
28. Victoriano Nuqui	Tween River Plantation Co.	A	130
29. Felipe Yosuico	do.	B	135
30. L. Roscom and T. Whitehorn	Padada Agricultural Co.	A	180
31. Enrique Montilla	do.	B	375
32. Emilio Camara	do.	C	350
33. Jose Timbol	Riverside Plantation Co.	Entire	267
34. Primo B. Carreon	South Mindanao Development Co.	Entire	763
35. D. C. Santos	Southern Davao Development Company	A	234
36. Mariano C. Pamintuan	do.	B	211
37. W. Allan Wood	do.	C	190
38. Agapito Subido	do.	D	182
39. Ricardo Reyes and Ramon Sullan	do.	E	200
40. Ricarte Ventosa	Tagurano Plantation Co.	A	86
41. Jose Torres	do.	C, D, E	280
42. Visayan Agricultural and Development Co.	Land covered by the rejected L.A. Nos. 4289 and 4291 of C. Raval and E. Anonas	A	246
43. Valentin H. Padilla	Pansit Plantation Co.	A	280
44. Patricia S. Montemayor	do.	B	274
45. Ramon T. Yulo	Akamine Bros. Plantation Co.	A	81
46. Jose Diokno	do.	B	138

Name of administrator	Plantation	Assigned portion	Area in hectares
47. Mariano Braganza	Takunan Plantation Co.	Entire	330
48. Felipe Zurbito and Co.	Bayabas Plantation Co.	B	246
49. Sergio Jalbuena	Biao Plantation Co. (Orig)	C	208
50. Fermin Caram, Jr.	do.	D	85
51. Generoso Ledesma	Gui Hing Plantation Co.	D	189
52. Julian Montilla	do.	E	203
53. Vicente Guinoo	do.	F	302
54. Patricio David	Lasang Plantation Co.	A	80
55. Arsenio Yulo	do.	B	90
56. Anastacio Pancho	do.	C and D	120
57. Ramon Tabiana	Matsuoka Development Co.	C	162
58. Benito Roces	do.	D	85
59. Jacinto Albarracin	Mindanao Reclamation Co.	A	144
60. Mauricio Revillas	do.	B	162
61. Vicente Garcia	do.	C	95
62. Apeles H. Lopez	Talomo River Agricultural Co	C	145
63. Rosendo Hernaez	do.	D	145
64. Emilio Infante	do.	E	130
65. Alfredo Rivera	South Mindanao Agricultural Company	Entire	200
66. Basilio Cortez and Faustino Alcarez	Tagurano Plantation Co.	B	105
67. Manuel Pineda	Land covered by the rejected L.A. No. 4292 of B. Esteban	B	131
68. Dorotea Esguerra	Land covered by the rejected L.A. No. 4088 of M. Roque	C	158
TOTAL AREA ASSIGNED			15,397

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 30

EXTENDING THE PERIODS PROVIDED FOR IN SECTIONS 3, 5, AND 6 OF REPUBLIC ACT No. 17, ENTITLED "AN ACT TO PROVIDE FOR THE CIRCULATION OF TREASURY CERTIFICATES WITH THE OFFICIAL SEAL OF THE REPUBLIC OF THE PHILIPPINES STAMPED, PRINTED OR SUPERIMPOSED THEREON, AND FOR OTHER PURPOSES."

WHEREAS, section 6 of Republic Act No. 17, approved September 25, 1946, provided that Treasury certificates not marked as therein provided shall, after November 30, 1946, not be legal tender for the purposes of section 1612 of the Revised Administrative Code;

WHEREAS, due to lack of time and adequate facilities it is materially impossible to comply with the requirements of sections 3 and 5 of said Act within the time fixed therein;

WHEREAS, it is necessary in the public interest to extend the periods provided for in sections 3, 5, and 6 of said Act;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by section 7 of Republic Act No. 17, do hereby extend for a period of one month the periods provided for in sections 3, 5, and 6 of Republic Act No. 17.

Done at the City of Manila, this 26th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 31

CREATING THE SHIPPING COMMISSION

By virtue of the powers vested in me by law, I, Manuel Roxas, President of the Philippines, do hereby create the Shipping Commission to be composed of a Chairman and four Members who shall be appointed by the President of the Philippines.

The Chairman, who shall at the same time be the Executive Officer of the Commission, shall serve on full time basis with compensation to be fixed by the President and the four Members, on part time basis with *per diems* at such rate as the President may fix.

The Shipping Commission is hereby authorized to accept and administer and provide for the care, custody, and operation of all the ships which may be sold and delivered to the Government of the Republic of the Philippines under and by virtue of the Agreement entered between the said Government and the Government of the United States of America on September 11, 1946, and of such other ships or floating equipment as may in the future be acquired by the Philippine Government. The Commission may provide for the operation by the Government of such ships or may enter into contract, subject to the approval of the President, with any person, association or corporation with a view to the disposition or operation of said ships, either by sale, lease, charter, or otherwise upon such terms as may be deemed most advantageous by it: *Provided,* That

in such contracts, preference shall be given to pre-war ship operators in the Philippines on the basis of the total tonnage of the ships operated by them in the coastwise service: *And provided, further,* That no ships shall be sold, leased or chartered to any person, association or corporation who is not qualified to operate said ships under the laws of the Philippines, subject to acquired rights as recognized by the Constitution. The Shipping Commission may require as a condition of the sale, lease or charter of said ships, that the grantee shall follow a certain route or run a certain line or lines as may be most advantageous to the public interest. No ship shall, without the consent of the President of the Philippines, be transferred to foreign registry or flag.

The Shipping Commission shall have the following powers, functions, and duties:

(*a*) To adopt rules and regulations, with the approval of the President, in regard to the conduct of its business;

(*b*) To appropriate by special budget and with the approval of the President from the proceeds of the sales of such ship the necessary amount or amounts for the administration, custody, and operation of such ships and for the operating expenses of the Commission;

(*c*) To appoint and fix the salaries of the officers and employees of the Commission, with the approval of the President; and

(*d*) To submit to the President weekly report of sales and transactions.

All departments, bureaus, and offices of the Government, its agencies and instrumentalities, including the corporations owned or controlled by the Government and the local governments shall extend, upon the request of the Shipping Commission, such assistance and facilities as the latter may need in the performance of its work.

The proceeds of all sales made by the Shipping Commission, except as otherwise appropriated in accordance with paragraph (*b*) above, shall be deposited in the Philippine National Bank to the credit of a special fund to be used exclusively for the purposes directed by law.

Done at the City of Manila, this 28th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 10

WHEREAS, the Philippine Red Cross has an unbroken record of humanitarian service to the Filipino people extending over a period of many years;

WHEREAS, our people have learned to look forward to and depend upon its assistance in cases of great disasters and public calamities;

WHEREAS, it is today rendering invaluable aid to Filipino war veterans and to hospitalized members of the Philippine Army in the form of service, recreational facilities and medical supplies;

WHEREAS, the Philippine Red Cross has contributed and continues to contribute to the health, welfare and safety of our people by extending assistance to public and private hospitals and through its service programs in Home Nursing, Junior Red Cross, First Aid, Life Saving and related activities;

WHEREAS, despite its own heavy losses during the war, the Philippine Red Cross has once more resumed its mission of service, prepared to contribute to the rehabilitation of our country and people;

WHEREAS, the Philippine Red Cross will soon be established as an independent organization as befits our new status as an independent Republic;

WHEREAS, such forthcoming independence of the Philippine Red Cross will require even greater support from our people as well as stronger financial foundation and backing to insure its stability and the extent and efficiency of its service;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, do hereby declare the period between October 28 and November 30, nineteen hundred and forty-six, for the national fund campaign of the Philippine Red Cross, and I call upon all our citizens, our business and professional groups, government officials, teachers and foreign nationals residing in our country as well as upon all public spirited organizations to support this campaign and to give generously of their means, time and personal services in furtherance of the aims and ends of the Philippine Red Cross.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 30th day of September, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

[SEAL] MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 13

RESERVING FOR AGRICULTURAL COLONY SITE PURPOSES A PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITY OF CARAMOAN, PROVINCE OF CAMARINES SUR, ISLAND OF LUZON.

Upon the recommendation of the Secretary of Agriculture and Commerce and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, and Commonwealth Act No. 691, as amended, I hereby withdraw from sale or settlement and reserve for Agricultural Colony site purposes, under the administration of the Director of Lands, subject to private rights, if any there be, and to future classification and survey and to the conditions that the timber and forest products therein, if any, shall be placed under the administration and control of the Bureau of Forestry, in accordance with Forest Laws and Regulations, the following parcel of the public domain situated in the Municipality of Caramoan, Province of Camarines Sur, Island of Luzon, to wit:

Beginning at point 1, marked on the accompanying map, located on the western bank of Tabgon River, identical to F. Z. Cor. No. 113 of Block I, L. C. Proj. No. 17–A, Camarines Sur, a Duñgon-late tree 20 cm. in diameter, which is about 8,1000 meters N 42° W from BLLM No. 1, Caramoan, Camarines Sur; thence following the Tabgon River upstream in a southerly direction about 6,300 meters to point 2, identical to F. Z. Cor. No. 59 of Block I, L. C. Proj. No. 17–A, a Balobo tree 40 cm. in diameter; thence following the forest zone line in a northwesterly direction about 3,875 meters to point 3, identical to F. Z. Cor. No. 74 of Block I, L. C. Proj. No. 17–A, a Dalunut tree 30 cm. in diameter; thence following the forest zone line in a southwesterly direction about 2,975 meters to point 4, identical to F. Z. Cor. No. 85 of Block I, L. C. Proj. No. 17–A, a Taratara tree 30 cm. in diameter; thence following the

forest zone line in a westerly direction about 5,075 meters to point 5, identical to F. Z. Cor. No. 101 of Block I, L. C. Proj. No. 17–A, an Amugis tree 40 cm. in diameter; thence following the forest zone line in a northwesterly then easterly direction about 6,500 meters to point 6, identical to F. Z. Cor. No. 34 of Block I, L. C. Proj. No. 17–B, a Salingogon tree 35 cm. in diameter; thence following the forest zone line in northwesterly direction about 7,475 meters to point 7, identical to F. Z. Cor. No. 62 of Block I, L. C. Proj. No. 17–B, a Binuang tree 65 cm. in diameter; thence following the forest zone line in a northwesterly direction about 5,525 meters to point 8, identical to F. Z. Cor. No. 81 of Block I, L. C. Proj. No. 17–B, a Malapapaya tree 20 cm. in diameter; thence following the forest zone line in a southerly then northwesterly direction about 4,450 meters to point 9, identical to F. Z. Cor. No. 98 of Block I, L. C. Proj. No. 17–B, a *Terminalia* sp. tree 25 cm. in diameter; thence following the forest zone line in a southerly then northwesterly direction about 7,100 meters to point 10, identical to F. Z. Cor. No. 19 of Block X, L. C. Proj. No. 2–B, Lagonoy, Camarines Sur, a *Garcinia* sp. tree 35 cm. in diameter; thence following the forest zone line in a southwesterly direction about 2,850 meters to point 11, identical to F. Z. Cor. No. 28 of Block X, L. C. Proj. No. 2–B, a Putian tree 20 cm. in diameter; thence S 14° W about 900 meters to point 12, apoint at the bank of a creek; thence S 60° W about 2,300 meters to point 13, a point at the junction of Sipaco River and a branch creek; thence N 82° W about 2,200 meters to point 14, a point at the north bank of a creek; thence N 2° E about 2,750 meters to point 15, a point at the north bank of a creek; thence N 60° E about 1,700 meters to point 16, a point at the north bank of a creek; thence following the creek and Sipaco River down stream in an easterly direction, about 1,900 meters to point 17, a point at the north bend of Sipaco River; thence following the Sipaco River down stream in a northerly direction and the edge of a mangrove swamp in a southerly then northeasterly direction about 8,000 meters to point 18, identical to F. Z. Cor. No. 106 of Block I, L. C. Proj. No. 17–B, a Katongmachin tree 25 cm. in diameter; thence following the edge of the mangrove swamp in a northwesterly direction about 1,650 meters to point 19, a point at the edge of a mangrove swamp; thence following the seacoast in a southeasterly direction about 2,900 meters to point 20, identical to F. Z. Cor. No. 2 of Block I, L. C. Proj. No. 17–B, a point at the edge of a swamp on the east bank of Bani River, thence following the edge of the mangrove swamp and seacoast in a northeasterly then westerly direction about 11,175 meters to point 21 at the bank of Pambuhan River, identical to F. Z. Cor. No. 6 of Block I, L. C. Proj. No. 17–B, a Bacauan tree 20 cm. in diameter; thence following the Pambuhan River up stream in a southwesterly then easterly direction about 7,000 meters to point 22, identical to Cor. No. 135 of the sketch plan of the land claimed by Ramon O. Alvarez; thence S 55° E about 5,800 meters to point 23, identical to Cor. No. 32 of the sketch plan of the land claimed by Ramon O. Alvarez; thence following the eastern boundary of the land claimed by Ramon Alvarez in an easterly then northeasterly direction about 4,800 meters to point 24, identical to F. Z. Cor. No. 109 of Block I, L. C. Proj. No. 17–A, a Pototan tree 30 cm. in diameter; thence following the edge of the swamp and seacoast in a soutehrly then northeasterly direction about 7,700 meters to point 1, point of beginning, containing an area of about 10,200 hectares minus 2,300 hectares co-

vered by possible legitimate claims, thus giving as remainder 7,900 hectares for the initial Agricultural Colony Site.

Bounded on the north by Mangrove swamps, Sisiran Bay and land claimed by Mr. Ramon O. Alvarez; on the ast by Tabgon River; on the south by Forest zone; and on the west by Public Forest.

(Note.—This is subject to change to conform with future survey.)

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 9th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

[SEAL]

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 14

DECLARING THE PROVISIONS OF ACT No. 4054, KNOWN AS THE PHILIPPINE RICE SHARE TENANCY ACT, AS AMENDED, TO BE IN FULL FORCE AND EFFECT THROUGHOUT THE PHILIPPINES.

For the purpose of preventing serious controversies that may arise as a result of the conflicting interpretations of the terms of verbal contracts and other agreements affecting the relations between landlords and tenants in the Philippines, I, Manuel Roxas, President of the Philippines, acting under and by virtue of the powers vested in me by law and upon recommendation of the Secretary of Labor, do hereby declare the provisions of Act Numbered Four thousand and fifty-four, otherwise known as The Philippine Rice Share Tenancy Act, as amended, to be in full force and effect from and after the date of this proclamation throughout the Philippines.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 12th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

[SEAL] MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 15

DESIGNATING MONDAY, DECEMBER 2, 1946, AS PARENTS' DAY

I, Manuel Roxas, President of the Philippines, hereby designate Monday, the 2nd day of December, nineteen hundred and forty-six, as Parents' Day.

We are embarked upon a vast task of national reconstruction. Its basis is the Filipino home. Whatever strength our Republic will develop with the years, whatever greatness it will in due course achieve, must find its source-spring in the enduring integrity of the Filipino home.

It is most appropriate, therefore, that on this day we give special thought to the father and the mother upon whom the stability of that home depends. Rooted in the wisdom of our folkways together they give what meaning there is to the Filipino home as consecrated cradle to every succeeding generation, dedicated workshop for the national character, guarded repository of the tried traditions of our race.

Let this day be observed by our citizens at large, by our churches, and by public and other schools, with appropriate ceremonials and programs in fitting homage to their unquestioned moral authority, in acknowledgment of their responsibility in sustaining the beauty and power of our native and national institutions.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 27th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

[SEAL] MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 17

IMPLEMENTING ADMINISTRATIVE ORDER No. 11, CREATING GUERRILLA AMNESTY COMMISSIONS

To implement the provisions of Administrative Order No. 11, dated October 2, 1946, and by virtue of the powers vested in me by law, I, Manuel Roxas, President of the Philippines, do hereby create and appoint an additional Guerrilla Amnesty Commission which is hereby designated as the Philippine Army Amnesty Commission, consisting of the following officers:

Colonel Luis P. Torres, JAGS
Major Fred Ruiz Castro, JAGS
Major Sixto S. J. Carlos, JAGS

The Philippine Army Amnesty Commission shall take cognizance of all cases of persons subject to military law and falling within the terms of Amnesty Proclamation No. 8.

No member of the Philippine Army Amnesty Commission shall sit as member of a court-martial to try and decide any case which he may have previously passed upon as a member of the Commission.

The appointing authority of any court-martial shall submit to the Philippine Army Amnesty Commission through the Adjutant General, Philippine Army, all cases in which the accused claims the benefits of Amnesty Proclamation No. 8, dated September 7, 1946.

In conducting hearings and rendering decisions on cases submitted to it, said Commission shall be governed by such rules and regulations applicable to the Commissions created under Administrative Order No. 11, dated October 2, 1946, as are not inconsistent with rules and regulations of special application to the said Philippine Army Amnesty

Commission. The Secretary of National Defense is hereby authorized to promulgate rules and regulations for the purpose of expediting the work of the Philippine Army Amnesty Commission.

Any temporary vacancy in the Philippine Army Amnesty Commission shall be filled by the Secretary of National Defense.

Such stenographers, civilian employees and transportation facilities of the Philippine Army as may be needed by the Philippine Army Amnesty Commission shall be made available to it by the Chief of Staff, Philippine Army.

Done at the City of Manila, this 15th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 18

CREATING AN INTERDEPARTMENTAL COMMITTEE TO STUDY, DETERMINE AND LIST THE SURPLUS PROPERTIES NEEDED FOR THE USE OF THE GOVERNMENT, ITS AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS.

WHEREAS, Republic Act No. 33, which governs the disposition of properties acquired from the Government of the United States of America under the Agreement of September 11, 1946, contemplates that in the disposition of said properties priority shall be given to the needs of the Government, its subdivisions and instrumentalities, including government-owned or controlled corporations;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby create an Interdepartmental Committee to study, determine, and list all the requirements of the different departments, bureaus and offices of the Government, its agencies and instrumentalities, including government-owned or controlled corporations and local governments, for proper-

ties acquired by the Government of the Republic of the Philippines pursuant to the Agreement between the United States of America and the Philippines on September 11, 1946. The Committee shall be composed of the following:

The Chief of the Executive Office	Chairman
The Commissioner of the Budget	Member
The Undersecretary of the Interior	Member
The Undersecretary of Finance	Member
The Undersecretary of Justice	Member
The Undersecretary of Agriculture and Commerce	Member
The Undersecretary of Instruction	Member
The Undersecretary of Public Works and Communications	Member
The Undersecretary of Labor	Member
The Undersecretary of Health and Public Welfare	Member
The Chief of Staff, Philippine Army	Member
Mr. Arturo Tanco	Member

The different departments, bureaus and offices of the Government, its agencies and instrumentalities, including the government-owned or controlled corporations and local governments, shall furnish to the Committee such technical and clerical assistance, data, and information as it may require in connection with the performance of its duties and the Committee shall have access to and the right to examine any books, documents, papers or records of said departments, bureaus or offices, agencies or instrumentalities, corporations and local governments.

Done at the City of Manila, this 15th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 19

CREATING A COMMITTEE TO CONDUCT NEGOTIATIONS WITH THE ARCHBISHOP OF MANILA FOR THE ACQUISITION BY THE GOVERNMENT OF PROPERTIES BELONGING TO THE LATTER.

By virtue of the powers vested in me by the Constitution and existing laws, I, Manuel Roxas, President of the Philip-

pines, do hereby create a Committee to be composed of the following:

Hon. Roman Ozaeta	Chairman
Hon. Ramon Avanceña	Member
Hon. Ramon Fernandez	Member
Mr. Jose Paez	Member
Mr. Antonio Paguia	Member
Mr. Faustino Aguilar	Member
Mr. Jose Baluyot	Member

The Committee herein created shall conduct negotiations with the Archbishop of Manila with a view to the acquisition by the Government of such properties owned by the Archbishop as he may be willing to dispose of in favor of the Government and the acquisition of which properties by the Government will promote the public interest. The Committee shall submit to the President as soon as possible a report of the results of its negotiations with the Archbishop of Manila, together with its recommendations.

Done at the City of Manila this 29th day of November, in the year of Our Lord, nineteen hundred and forty-six, and of the Independence of the Philippines, the first.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

RESOLUTION OF CONGRESS

FIRST CONGRESS OF THE PHILIPPINES

First Session

Begun and held at the City of Manila on Saturday, the twenty-fifth day of May, nineteen hundred and forty-six

[RESOLUTION OF BOTH HOUSES]*

RESOLUTION OF BOTH HOUSES PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE PHILIPPINES TO BE APPENDED AS AN ORDINANCE THERETO.

Resolved by the Senate and House of Representatives of the Philippines in joint session assembled, by a vote of not less than three-fourths of all the Members of each House voting separately, To propose, as they do hereby propose, the following amendment to the Constitution of the Philippines to be appended as an Ordinance thereto:

"ORDINANCE APPENDED TO THE CONSTITUTION

"Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines."

This amendment shall be valid as a part of the Constitution when approved by a majority of the votes cast in an election at which it is submitted to the people for their ratification pursuant to Article XV of the Constitution.

Adopted, September 18, 1946.

* To be published in English and Spanish in three (3) consecutive issues of the OFFICIAL GAZETTE as required by section 2 of Republic Act No. 73 submitting to the Filipino people, for approval or disapproval, the proposed amendment to the Constitution. (Second publication.)

PRIMER CONGRESO DE LA REPÚBLICA DE FILIPINAS

Primer Período Ordinario de Sesiones

Empezado y celebrado en la Ciudad de Manila el sábado, veinticinco de mayo de mil novecientos cuarenta y seis

[RESOLUCIÓN DE AMBAS CÁMARAS]*

RESOLUCIÓN DE AMBAS CÁMARAS PROPONIENDO UNA ENMIENDA A LA CONSTITUCIÓN DE FILIPINAS QUE SERÁ ADSCRITA COMO UNA ORDENANZA DE LA MISMA.

El Senado y la Cámara de Representantes de Filipinas constituídos en sesión conjunta, mediante el voto de no menos de las tres cuartas partes de todos los Miembros de cada Cámara en votación separada resuelven, Proponer, como por la presente proponen, la siguiente enmienda a la Constitución de Filipinas que será adscrita como una Ordenanza de la misma:

"ORDENANZA ADSCRITA A LA CONSTITUCIÓN

"No obstante las disposiciones del artículo primero, Título Trece y del artículo octavo, Título Catorce de la precedente Constitución, durante la efectividad del Convenio Ejecutivo celebrado por el Presidente de Filipinas con el Presidente de los Estados Unidos el cuatro de julio de mil novecientos cuarenta y seis, con arreglo a las disposiciones de la Ley Número Setecientos treinta y tres del Commonwealth, pero que en ningún caso se prorrogará más allá del tres de julio de mil novecientos setenta y cuatro, la disposición, explotación, desarrollo y aprovechamiento de todos los terrenos agrícolas, madereros y mineros del dominio público, las aguas, los minerales, el carbón, el petróleo y otros aceites minerales, todas las fuerzas y fuentes de energía potencial y demás recursos naturales de Filipinas y la explotación de utilidades públicas, si fueren asequibles para cualquiera persona, lo serán para los ciudadanos de los Estados Unidos y para todas las formas de empresas comerciales de la propiedad o bajo el control directo o indirecto de los ciudadanos de los Estados Unidos de la misma manera y en las mismas condiciones impuestas a los ciudadanos de Filipinas o a las corporaciones o sociedades que sean de la propiedad o estén bajo el control de los ciudadanos de Filipinas."

Esta enmienda será válida como parte de la Constitución cuando sea aprobada por una mayoría de los votos emitidos en una elección en la que será sometida al pueblo para su ratificación de acuerdo con el Título XV de la Constitución.

Adoptada, Septiembre 18, 1946.

* Se publicará en ingles y en español en tres (3) números consecutivos de la GACETA OFICIAL de acuerdo con el artículo 2 de la Ley de la República No. 73 que somete al pueblo filipino, para su aprobación o desaprobación, la propuesta enmienda a la Constitución. (Segunda publicación.)

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

DEPARTMENT OF THE INTERIOR

PROVINCIAL CIRCULAR (Unnumbered)

October 18, 1946

INTENSIFICATION OF LOCUST EXTERMINATION CAMPAIGN

To all Provincial Governors and City Mayors:

Reports reaching this Department show that the locust infestation in the Provinces of Mindanao and the Visayas continues to exact its toll of destruction on crops and plants. In view of the already existing shortage of foodstuffs and the fact that even a prospective full harvest cannot meet the local food demand, we may fully appreciate the extent of the food problem that will confront us should our harvest be materially reduced due to locust infestation.

I therefore enjoin all governors, city mayors, municipal and municipal district mayors and other local officials to make effective to the fullest extent the provisions of Act No. 2472, otherwise known as the Locust Law, and to impress upon the people the necessity of coördinated and spontaneous community action to wipe out this pest in their respective localities. In this connection, it is desired that in areas infested by locusts, periodical reports on the progress of the campaign against such infestation be submitted to this Department.

JOSE C. ZULUETA
Secretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

November 19, 1946

ACQUISITION OF OFFICE SUPPLIES, MATERIALS AND EQUIPMENTS

To all Provincial Governors and City Mayors:

The Surplus Property Commission will consider requisitions of the provinces, cities and municipalities for supplies, materials and office equipments, at a price to be paid 25 per cent down upon delivery if no cash is presently available, and the balance to be paid within the period of three years with interest Any article requisitioned will have to be taken by the requisitioner at the base or depot to be indicated by the proper authorities.

In view of the retrenchment policy and bearing in mind that the practice of economy is one source of income that is so much needed now-a-days, it will be necessary to limit a requisition to such supplies, materials and equipments as are *only* absolutely needed and indispensable to enable the official or employee not to meet his/her personal convenience but to discharge his/her functions and activities properly and efficiently and those that are absolutely needed in the interest of the public service. For our guidance, therefore, in considering a requisition, there should be attached to each requisition a statement of the head of office concerned showing (1) data explaining why the article is needed; (2) description of the article if any being used now by the requisitioning official or employee; (3) certificate of the treasurer concerned as to the availability of of cash duly appropriated therefor to cover the down payment of not less than 25 per cent of the purchase price of the article if it cannot be paid in full at once, and (4) position and brief description of the duties and functions of the official or employee for whom the supplies, materials or equipment are intended.

The articles which should be given preference may be the following: (*a*) shoes, uniforms either ready-made or khaki cloth, and fire-arms and ammunition for provincial guards and policemen, (*b*) office supplies and equipment such as typewriters, desks and chairs.

The foregoing instructions apply only to offices under the jurisdiction of this Department. The other offices will have to be guided by instructions that may be issued by the Department Heads who have jurisdiction over their offices and activities. Therefore, only requisitions for offices of provincial governors, city mayors, mayors of municipalities and other offices under our jurisdiction will be submitted to this Department for consideration.

Provincial Governors will please transmit this circular to the offices including Municipal Mayors, under the supervision and/or jurisdiction of this Department.

JOSE C. ZULUETA
Secretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

November 22, 1946

COMPLIANCE BY LOCAL OFFICIALS OF INSTRUCTIONS EMBODIED IN SAFE-CONDUCT PASSES.

To all Provincial Governors, City and Municipal Mayors, and Military Police Officers:

It has come to the attention of this Office that the printed safe-conduct passes issued concurrently by the Office of the President of the Philippines and by this Department, a copy of which is attached and of which thousands of copies have been dropped by airplane over Central Luzon, intended for the lawless elements, is being disregarded and violated by local police officers, military police personnel and civilian guards. It appears that members of dissident elements desiring to take advantage of the opportunity to abandon their present activities and present themselves to the government authorities, are being unreasonably subjected to threats and physical injuries thereby discouraging the surrender of those who are afraid to face the wrath of policemen, military police personnel and civilian guards.

Effective immediately, all members of local police bodies, military police personnel and civilian guards are directed to give due course to all persons surrendering to the government and to see to it that in the investigation of such cases, justice does not miscarry.

This Office will take drastic action against any peace officer or local official who may be found responsible for any abuse of authority against suspects or members of the dissident elements who desire to surrender to the Government.

Provincial Governors, City and Municipal Mayors and Military Police officers are enjoined to give this circular the widest possible publicity for the information and guidance of all concerned.

JOSE C. ZULUETA
Secretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

October 24, 1946

COÖRDINATION OF EFFORTS BETWEEN THE LOCAL OFFICIALS AND THE PERSONNEL OF THE MILITARY POLICE COMMAND IN THE SURRENDER OF LAWLESS ELEMENTS.

To all Provincial Governors, City Mayors and Provincial Provost Marshals:

It has come to the attention of this office that the local officials and the personnel of the Military Police Command are not coördinating their efforts in the matter of the surrender of dissident elements. It appears that when a particular individual belonging to the lawless elements gives up himself to the local officials, the authorities of the MPC in the provinces are not informed of it so that the latter has no way of checking up whether that individual is wanted by the police authorities or not. It is understood that the MPC does not also advise the local officials when lawless elements surrender to any of its personnel. The situation thus created is undesirable as the attitude adopted by these two units which are side by side working for a common purpose—the restoration and maintenance of peace and order—is not conducive to the attainment of the desired objective. On the contrary, it is bound to be the source of discord and productive of misunderstandings between these two units of the public service which are both under this Department.

It is desired that local officials and the personnel of the MPC take immediately the necessary steps to insure that each of these two distinct entities of the public service falling under one executive department is fully informed by one another of surrenders of members of dissident groups soon after each of such surrenders are made.

Provincial Governors will please transmit the contents of this circular to all Mayors of the Municipalities under their respective jurisdiction for their information and guidance, enjoining them to see that the instructions herein contained are fully and properly complied with.

JOSE C. ZULUETA
Secretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

November 28, 1946

MORE INTENSIVE CAMPAIGN ON SEARCH FOR ILLEGALLY POSSESSED FIREARM

To the Provost Marshal General, all Provincial Governors, City and Municipal Mayors, and all Provincial Provost Marshals:

You are hereby ordered to conduct immediately a more intensive campaign on loose firearms. In this connection, search should be made of every house where there is reasonable ground to believe that an occupant thereof possesses an illegal firearm, but before doing so, a search warrant must be secured from the Court of First Instance or Justice of the Peace Court as the case may be. Please see to it that the searching party shall be accompanied by a responsible officer to see to it that the search shall not be conducted with undue severity and that no abuses are committed in connection therewith. After the search, a certification from the owner of the house searched should be secured stating that the search was conducted in the proper manner. In case any firearm without license is found, a receipt therefor should be issued by the ranking officer of the searching party and delivered to the owner of the house searched. Attention in this connection is invited to sections 6, 7, 8, 10 and 11 of Rule 122 of the Rules of Court prescribing the proper procedure to be followed in executing a search warrant.

JOSE C. ZULUETA
Secretary of the Interior

DEPARTMENT OF JUSTICE

ADMINISTRATIVE ORDER NO. 202

October 29, 1946

TRANSFERRING THE TERM OF COURT AT CULASI, ANTIQUE, TO SAN JOSE, ANTIQUE

In the interest of the administration of justice, and upon request of the provincial Board and the Bar Association of Antique, as favorably indorsed by the District Judge, the regular term of court at Culasi, which by law should begin on the first Tuesday of December, is hereby transferred to the municipality of San Jose, Antique.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER NO. 203

November 2, 1946

AUTHORIZING JUDGE-AT-LARGE BERNARDINO QUITORIANO TO HOLD COURT IN CAGAYAN

In the interest of the administration of justice, the Honorable Bernardino Quitoriano, Judge-at-large, is hereby authorized to hold court in the Province of Cagayan, as soon as practicable, for the purpose of trying all kinds of cases and to enter final judgments therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER NO. 204

November 1, 1946

DESIGNATING ASSISTANT CITY FISCAL JOSE L. ABAD, OF CEBU, AS JUDGE OF THE MUNICIPAL COURT OF CEBU TO TRY AND DECIDE A CERTAIN CASE.

In the interest of the administration of justice, and it appearing that Judge Filomeno B. Ybañez, of the Municipal Court of Cebu, is related to the plaintiff in civil case No. R–19 of said court, Mr. Jose L. Abad, Assistant City Fiscal of Cebu, is hereby designated to act as Judge of the Municipal Court, City of Cebu, to try said case and to enter final judgment therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER NO. 205

November 5, 1946

DESIGNATING CADASTRAL JUDGE VICENTE SANTIAGO AS MEMBER OF THE SECOND GUERRILLA AMNESTY COMMISSION IN LIEU OF JUDGE HIGINO DE GUIA.

Pursuant to the provisions of Administrative Order No. 11 of His Excellency, the President of the Philippines, and in view of the illness of Hon. Higino de Guia, Member of the Second Guerrilla Amnesty Commission, the Honorable Vicente Santiago, Judge of First Instance (Cadastral), is hereby designated to act as member of the said commission, in lieu of Judge De Guia until further orders.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 206

November 7, 1946

AUTHORIZING JUDGE OF FIRST INSTANCE CONRADO V. SANCHEZ TO TRY IN BONTOC, MOUNTAIN PROVINCE, THE CASES ARISING FROM THE SUBPROVINCE OF IFUGAO.

In the interest of the administration of justice, and upon recommendation of the Deputy Provincial Governor of Mountain Province, the Honorable Conrado V. Sanchez, Judge of the Second Branch, Fourth Judicial District, is hereby authorized to try in Bontoc, Mountain Province, the cases arising from the Subprovince of Ifugao and to enter final judgment therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 207

November 7, 1946

AUTHORIZING JUDGE-AT-LARGE PABLO VILLALOBOS TO HOLD COURT IN PAGADIAN, ZAMBOANGA, ON DECEMBER 3, 1946.

In the interest of the administration of justice, and upon his request, the Honorable Pablo Villalobos, Judge-at-large, is hereby authorized to hold court in Pagadian, Zamboanga, on December 3, 1946, or as soon thereafter as praticable, for the purpose of trying all kinds of cases and to enter final judgments therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 208

November 9, 1946

AUTHORIZING JUDGE OF FIRST INSTANCE FERNANDO HERNANDEZ TO HOLD COURT IN KALIBO, CAPIZ.

In the interest of the administration of justice, the Honorable Fernando Hernandez, Judge of the Sixteenth Judicial District, is hereby authorized to hold court in the municipality of Kalibo, Province of Capiz, as soon as practicable, for the purpose of trying all kinds of cases and to enter final judgment therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 209

November 8, 1946

AUTHORIZING CADASTRAL JUDGE VICENTE SANTIAGO TO DECIDE IN LA UNION CERTAIN CASES HEARD BY HIM IN PAMPANGA.

In the interest of the administration of justice, and pursuant to his request, the Honorable Vicente Santiago, Judge of First Instance (Cadastral), is hereby authorized to decide in La Union, civil cases Nos. 26, 13 and 104–J entitled "Pedro Yonzon et al., *vs.* Valeriana Bartolome," "Andres Garcia 1.°, et al., *vs.* Proceso Santos, et al.," and "Mariano Nepomuceno *vs.* E. A. Narciso," which were heard by him while holding court in the Province of Pampanga.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 210

November 11, 1946

DESIGNATING JUSTICE OF THE PEACE JESUS MURILLO, OF MALAYBALAY, BUKIDNON, AS REGISTER OF DEEDS FOR THE PROVINCE OF BUKIDNON.

In the interest of the public service, and pursuant to the provisions of section 201 (*d*) of the Administrative Code, Mr. Jesus Murillo, Justice of the Peace of Malaybalay, Bukidnon, is hereby designated to act as Register of Deeds for the Province of Bukidnon until a regular register of deeds shall have been appointed for said province, or until further orders.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 211

November 23, 1946

DESIGNATING JUDGE OF FIRST INSTANCE NICASIO YATCO TO ACT AS MEMBER OF THE EIGHTH GUERRILLA AMNESTY COMMISSION IN LIEU OF JUDGE FELIX BAUTISTA ANGELO.

Pursuant to the provisions of Administrative Order No. 11 of His Excellency, the President of the Philippines, and in view of the detail of Hon. Felix Bautista Angelo,

Member of the Eight Guerrilla Amnesty Commission, to the Department of Justice, the Honorable Nicasio Yatco, Judge of the First Branch, Eleventh Judicial District, is hereby designated to act as member of the said commission in lieu of Judge Felix Bautista Angelo until further orders.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER NO. 212

November 23, 1946

AUTHORIZING CADASTRAL JUDGE JUAN P. ENRIQUEZ TO HOLD COURT IN LAGUNA

In the interest of the administration of justice, the Honorable Juan P. Enriquez, Judge of First Instance (Cadastral), is hereby authorized to hold court in the Province of Laguna, beginning December 2, 1946, for the purpose of trying all kinds of cases and to enter final judgments therein.

ROMAN OZAETA
Secretary of Justice

SECURITIES AND EXCHANGE COMMISSION

RULES AND REGULATIONS GOVERNING THE PRESENTATION OF PROOF OF OWNERSHIP OF SECURITIES AND THE RECONSTRUCTION OF LOST RECORDS OF CORPORATIONS AND PARTNERSHIPS.

Pursuant to the provisions of Republic Act No. 62, the following Rules and Regulations governing the presentation of proof of ownership of securities prior to the issuance of replacement certificates and the reconstruction of articles, by-laws and other corporate records of registered corporations, partnerships and other forms of association, are hereby promulgated for the information and guidance of all concerned.

A. RECONSTRUCTIONS OF STOCK AND TRANSFER BOOKS

1. For purposes of these rules and regulations, the term "securities" shall be limited to shares of stocks, corporate bonds and shares of limited partners in limited partnerships.

2. Corporations and other forms of association which issued securities on or before March 1, 1945, shall require their security holders to present proof of their holdings at the principal office of the corporation or association, within a period to be established by their respective boards of directors or managing partners, which period shall be not less than six months and shall not extend beyond June 30, 1947.

3. Notice of such requirement shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation published in the place where the principal office of the corporation or association is located, or, if no newspaper is published in such place, then in a newspaper of general circulation in the Philippines, and by ordinary mail sent at the last known address of the security holders.

4. Upon the fixing of the period for the presentation of proof, it shall be the duty of security holders to file their claims and submit the evidence of their holding within the period prescribed for the presentation thereof, unless the Securities and Exchange Commissioner, upon proper cause shown, shall, in general or specific cases, have granted extensions of time for the presentation of proof of ownership of securities, but in no case shall the total extended period exceed six months from the expiration of the original period.

5. Evidence of ownership of securities may be presented in the form of share certificates or bonds, receipts of payment on shares, deeds of transfer or sale, and other papers or documents evidencing and/or indicating title to the securities.

6. Security holders who have lost their certificates and/or other written evidence of their holdings may prove their ownership by means of affidavit to be filed in triplicate showing the following:

a. How, when and where their certificates or other evidence of ownership were lost or destroyed;
b. The number of shares represented by such certificate or other evidence of ownership;
c. The serial number of the certificate, if known;
d. The name of the corporation which issued the same;
e. The amount paid thereon;
f. Such other facts as will tend to establish title to the securities; and,
g. That diligent efforts have been exerted to locate the lost/destroyed certificates or other evidence of ownership.

Similar affidavits or other proof may be required of the security holders where the evidence submitted under paragraph 5 of these rules and regulations does not satisfactorily prove the ownership of the security: *Provided, however,* That whenever an affidavit of ownership is submitted, the issuer corporation shall, after satisfying itself of the truthfulness of the contents thereof from an examination of the books and records of the corporation, advertise in a newspaper published at the place where the principal office of the corporation or association is located, or, if no newspaper is published in such place, then in a newspaper of general circulation in the Philippines, once a week

for three consecutive weeks at the expense of the security holder, the substance of the affidavit stating, among other things, the name of the corporation, the name of the registered owner, the serial number of the certificate, if known, the number of shares represented by each certificate, and that, after the expiration of one month from the date of the last publication of the announcement, if no adverse claim has been filed with said corporation regarding the certificate, the said corporation shall issue, in lieu thereof, new certificate of stock; *And provided, further*, That in all cases where an affidavit of ownership is submitted, a bond or other security in lieu thereof running for a period of one year may be required by the issuer for a sum and in such form and with such sureties as may be satisfactory to the board of directors or managing partners, unless the claimant prefers to allow the corresponding certificate of stock to remain with the issuer until the expiration of the period provided in section 1 (H) of Republic Act No. 62.

Where the stock and transfer book of the issuer corporation is intact, the entries in the stock and transfer book shall be evidence as against the issuer corporation, unless there is sufficient indication that the certificate is or has been traded as a certificate indorsed in blank or that it has become a "street" certificate.

In case of conflict in the number of shares claimed in the affidavit by the security holder and that appearing in the stock and transfer book of the issuer corporation, the entries in the book kept with all the formalities provided for by law, shall prevail, in the absence of competent evidence to the contrary.

7. Upon satisfactory proof of ownership of securities, the issuer corporation or association shall issue new share certificate or bonds to the persons entitled thereto, or, in case of securities which have not been duly paid, or for which no payment whatsoever has been made, the issuer shall recognize all valid claims of ownership thereto or interest therein.

8. The issuer corporation or association shall report to the Commission within fifteen days after the expiration of the period prescribed in paragraphs 2 and 4 hereof, (*a*) its authorized capital stock, or in case of bonds, the amount of issue authorized; (*b*) the total number of securities outstanding; (*c*) the total number of securities claimed; (*d*) the total number of securities unclaimed; (*e*) the total number of securities subject to conflicting claims; (*f*) all cases and/or claims against the issuer corporation or association concerning the ownership of securities, giving the names of the claimants and their respective holdings and/or subscriptions, the amount paid on subscriptions, if any; and (*g*) such other material facts as the Commission may require.

9. Upon the expiration of the period for the presentation of proof of ownership, replacement certificates for securities for which no claim of ownership has been filed, or the ownership of which has not been satisfactorily proved, shall be issued in the name of and delivered to the Securities and Exchange Commission to be held by said Commission in trust as provided in Republic Act No. 62.

10. The Commission shall, for a period of three years from the date the securities are turned over to it in pursuance of the provisions of the preceding paragraph, entertain claims of ownership thereto and shall require the issuer corporation or association to issue certificates or bonds to such claimants as shall introduce satisfactory proof of ownership, as prescribed in paragraphs 5 and 6 of these rules and regulations, or, in case of securities which have not been fully paid, or for which no payment whatsoever has been made, shall require the issuer to recognize all valid claims of ownership thereto or interest therein.

11. Security holders residing abroad may file their claims through duly authorized attorneys-in-fact.

12. Any person who by means of fraud, shall cause the recognition of any claim filed under the provisions of Republic Act No. 62, and these rules, or who shall make a false statement as to the number of securities held or owned by the claimant, or the amount paid thereon, or any fact material to the claim, shall, upon conviction, be punished by a fine not exceeding ₱10,000, or imprisonment not exceeding ten years or both such fine and imprisonment in the discretion of the court.

The same penalty shall be imposed upon the directors or officers of the issuer corporation or association who shall conspire, connive, or collude with the person who made the false statement referred to above.

B. RECONSTRUCTION OF LOST RECORDS OF DOMESTIC CORPORATIONS AND REGISTERED PARTNERSHIP

1. All registered domestic corporations, and registered partnerships or other forms of associations which lost their articles of incorporation and by-laws or articles of copartnership, either totally or partially, shall reconstruct the same or take steps toward such reconstruction within two years from October 17, 1946, by following the procedure prescribed hereunder.

2. Domestic corporations, and registered partnerships or other forms of associations, which have lost their corporate or partnership records must, within the period stated in the preceding paragraph, reconstruct the same by filing with the Commission a sworn petition, in triplicate, signed by the Pres-

ident, Secretary or any member of the board of directors of the corporation or by a managing partner in case of partnership. Said petition should state the following:

(*a*) Existence and non-dissolution of the corporation or partnership. (State date of incorporation or registration and date of filing of by-laws. In case of partnership, state the date of registration in the Mercantile Registry);

(*c*) Facts reciting the loss or destruction of the records to be reconstructed;

(*c*) Whether there has been any amendment made in the documents proposed to be reconstructed;

(*d*) Whether diligent efforts have been exerted to locate copies of the lost or destroyed records from all possible sources and result of such efforts, if made; and,

(*e*) A request to substitute the original records which were on file with the Securities and Exchange Commission with true and correct copies of the records, as reconstructed.

There must be included with the petition, signed and sworn to by the President, Secretary or any member of the board of directors of the corporation, or by a managing partner in case of partnership the following:

(*a*) Names and addresses of the present stockholders and the amount of their stockholdings, as far as could be determined;

(*b*) Inventory of the present or existing assets of the corporation or partnership;

(*c*) List of the present or existing obligations, if any, giving the names and addresses of the creditors and the amount due to each;

(*d*) The copies of the articles of incorporation and by-laws, which must be true and complete reproduction of the originals as could be faithfully recalled, certified to under oath by a majority of the directors, the President and the Secretary of the corporation. Said reproduced copies must be approved by the stockholders holding a majority of the issued and outstanding capital stock in a meeting held for the purpose, and such approval should be set forth in the certificate of the directors, the President and the Secretary; and,

(*e*) If the petition is filed on behalf of a corporation organized for the purpose of engaging in mining or on behalf of one organized during the Japanese occupation, a balance sheet prepared and certified by an independent Certified Public Accountant should be attached to the petition. Such balance sheet should be of a date not more than sixty days prior to the date of filing of the petition, unless the Commission finds a statement made prior to this period acceptable for the purpose.

The petition shall be set for hearing at a date to be fixed by the Commission and notice thereof shall be published, at the expense of the petitioner, once in a newspaper of general circulation in the Philippines, at least fifteen days prior to the date of the hearing. Hearings on reconstruction of records shall be public and any person may file written opposition to any petition filed with the Commission and any oppositor may appear at the hearing, either in person or through an authorized representative.

3. The Commission shall collect and receive from corporations reconstructing their records in accordance with the provisions hereof, fees according to the amount of capital stock of each such corporation at the time of reconstruction of such records, as follows:

Less than fifty thousand pesos, twelve pesos and fifty centavos.

Fifty thousand pesos but less than one hundred thousand pesos, twenty-five pesos.

One hundred thousand pesos but less than two hundred thousand pesos, thirty-seven pesos and fifty centavos.

Two hundred thousand pesos but less than three hundred thousand pesos, fifty pesos.

Three hundred thousand pesos but less than four hundred thousand pesos, sixty-two pesos and fifty centavos.

Four hundred thousand pesos but less than five hundred thousand pesos, seventy-five pesos.

Five hundred thousand pesos but less than one million pesos, one hundred pesos.

One million pesos but less than two million pesos, one hundred twenty-five pesos.

Two million pesos or more, one hundred and fifty pesos.

Provided, however, That if the shares of stock of the corporation are without *par value*, then, for the purpose of fixing fees prescribed herein, such shares shall be taken to be of the *par value* of one hundred pesos each: *And provided, further,* That the Commission shall collect and receive a fee of twenty-five pesos for every non-stock corporation, partnership or other forms of association reconstructing their records in accordance with the provisions hereof.

4. Domestic corporations and registered partnerships whose articles of incorporation and by-laws, or articles of copartnerships have not been lost or destroyed shall furnish the Commission with two certified copies of said articles of incorporation and by-laws, or articles of copartnership, as well as certified copies of amendments made thereto or documents filed with the Division of Archives, Bureau of Commerce and/or the Securities and Exchange Commission in connection therewith, and of such other corporate or partnership records as may be required by the Commission, accompanied by a sworn statement, in duplicate, signed by the President, Secretary or any member of the board of directors of the corporation, or by a managing partner in case of partnership, concerning the following facts:

(*a*) Existence or non-dissolution of the corporation or partnership (state date of incorporation or registration and date of filing of by-laws in case of a corporation);

(*b*) State whether or not there has been an amendment made to the documents being submitted; and,

(*c*) If the corporation reconstituting its records has been organized for the purposes of engaging in mining, or one organized during the Japanese occupation, a balance sheet prepared and certified by an independent Certified Public Accountant should be attached to the sworn statement. Such balance sheet should be of a date not more than sixty days prior to the date of filing of the petition, unless the Commission finds a statement made prior to this period acceptable for the purpose.

The originals of the documents must be presented to the Commission for verification and comparison, after which, the same shall be returned to the interested parties.

5. These rules and regulations shall take effect upon approval by the Secretary of Justice.

FILEMON COSIO
Assistant to the Commissioner

Approved, November 29, 1946.

ROMAN OZAETA
Secretary of Justice

DEPARTMENT OF AGRICULTURE AND COMMERCE

BUREAU OF COMMERCE

COMMERCE ADMINISTRATIVE ORDER NO. 1–1

October 29, 1946

AMENDING RULE OF PROCEDURE No. 2 OF COMMERCE ADMINISTRATIVE ORDER No. 1, DATED JANUARY 11, 1946, ENTITLED "RECONSTRUCTION OF THE RECORDS OF THE BUREAU OF COMMERCE CONCERNING THE REGISTRATION OF TRADE-MARKS AND TRADE-NAMES, UNITED STATES LETTERS PATENT, BUSINESS NAMES AND STYLES, ALIASES USED IN BUSINESS, BULK SALES, AND COMMERCIAL FERTILIZERS; AND CONCERNING THE LICENSES ISSUED TO AMERICAN AND FOREIGN CORPORATIONS TO TRANSACT BUSINESS IN THE PHILIPPINES."

Rule of procedure No. 2 of Commerce Administrative Order No. 1, dated January 11, 1946, is hereby amended so as to read as follows:

"2. The form of authentication shall be:

'I, the undersigned .....,
a Notary Public in and for .....,
do hereby declare and certify as follows:

'I have personally examined the attached.....
(Phatostat,
..... copies of Philippine
typewritten)
..... No. ....., dated.....
(Registration, license)

and compared the same with the originals from which they were made, and I state in my official capacity that the attached .....
(Photostat, printed)

copies are true, correct, and complete copies of the original documents.

'I further certify that .....,
Name of officer)

known to me to be the (president, vice-president, secretary) of .....,
(Name of corporation owning the reg-
.....,
istration or license)

whose signature is subscribed below, made oath before me that the documents with which I compared the afore-mentioned .....
(Photostat, printed)

copies, as above stated, are the genuine original documents issued by the Bureau of Commerce, and that the authority or rights therein conferred have not been revoked or transferred to any other person as of this date.

'Given under my hand and seal this ..... day of ....., 19..... in the City of .....,

.....
.....
(Signature of president, vice-president, secretary)

.....
(Notary Public)

"The authentication shall be in accordance with Act No. 2103, when made outside the territorial jurisdiction of the Philippines: *Provided, however,* That in any country or place where there is a duly accredited and acting ambassador, minister, secretary of legation, *charge d'affaires,* consul, vice-consul or consular agent of the Republic of the Philippines, the authentication of the certificate of the notary public shall be made by any of such officials."

This order shall take effect sixty days from November 1, 1946.

MARIANO GARCHITORENA
Secretary of Agriculture and Commerce

DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS

BUREAU OF POSTS

ADMINISTRATIVE ORDER No. 17

November 21, 1946

RATE OF INTEREST ON DEPOSITS IN THE PHILIPPINE POSTAL SAVINGS BANK

Pursuant to the provisions of section 2021 of the Revised Administrative Code, the rate of interest on deposits in the Philippine Postal Savings Bank is hereby fixed at the rate of two per centum per annum, effective on January 1, 1947, until further orders.

JUAN RUIZ
Director of Posts

Approved November 29, 1946.

R. NEPOMUCENO
Secretary of Public Works and Communications

DEPARTMENT OF NATIONAL DEFENSE

DEPARTMENT ORDER No. 18

November 2, 1946

REORGANINZATION OF THE RADIO BROADCASTING COMMITTEE

Pursuant to the powers vested in me by the Radio Broadcasting Law, Act No. 3997, the Radio Broadcasting Committee is hereby reorganized with the following as members:

Undersecretary, Department of National Defense	Chairman
Collector of Internal Revenue	Member
Director of Education	Member
Director of Posts	Member
Press Relations Officer, Executive Office	Member
Superintendent, Radio Control Division, Department of National Defense	Executive Secretary

Pending the filling of the position of Under Secretary of the Department of National Defense, the undersigned will preside as Chairman of the Committee.

RUPERTO K. KANGLEON
Secretary

DEPARTMENT ORDER No. 19

November 6, 1946

RULES AND REGULATIONS GOVERNING THE AMATEUR RADIO SERVICE

Pursuant to the provisions of Act No. 3846, as amended, the following rules and regulations governing amateur radio operators and amateur radio stations in the Philippines are hereby promulgated, to take effect on November 6, 1946.

DEFINITIONS

1. *Amateur Service.*—The term "amateur service" means a radio service carried on by amateur stations.

2. *Amateur Station.*—The term "amateur station used by an "amateur," that is, a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest. It embraces all radio apparatus at a particular location used for amateur service and operated under a single instrument of authorization.

3. *Amateur Radio Communication.*—The term "amateur radio communication" means radio communication between amateur stations solely with a personal aim and without pecuniary interest.

4. *Amateur Operator.*—The term "amateur operator" means a person holding a valid license issued by the Secretary of National Defense authorizing him to operate licensed amateur stations.

AMATEUR OPERATIONS

5. *Classes of Operator Licenses and Eligibility Therefor.*—Amateur operator licenses are classified into two classes: Class A and Class B. An applicant for an amateur operator license of either class must possess the following general qualifications:

(*a*) He must be a citizen of the Philippines;
(*b*) He must be at least 18 years of age;
(*c*) He must be of good moral character.

No applicant shall be eligible to possess a Class A license unless he has been a holder of a Class B license for at least one year and unless he has actually operated his own amateur station for at least six months in the aggregate.

6. *Scope of Operator Authority.*—(*a*) Amateur operator licenses are valid only for the operation of licensed amateur radio stations: *Provided, however,* That any person holding a valid radio operator license of any class may, upon application therefor to the Secretary of National Defense, be authorized to operate stations in the experimental service licensed for operation on frequencies above 300,000 kilocycles;

(*b*) Amateur operating privileges are as follows:
Class A—all amateur privileges;
Class B—Holders of class B privileges are not authorized to operate amateur stations on radio-

telephony on the frequencies of 3,800 to 3,900 kilocycles, and 14,150 to 14,250 kilocycles.

7. *Posting of License.*—The original amateur operator license shall be posted in a conspicuous place in the radio room or kept by the operator in his personal possession and available for inspection at all times while he is on duty, except when such license has been submitted to the Secretary of National Defense with application for modification or renewal or has been mutilated, lost, or destroyed, and application has been made for a duplicate.

8. *Duplicate License.*—Any licensee applying for a duplicate license to replace an original which has been lost, mutilated, or destroyed shall submit to the Secretary of National Defense an affidavit attesting to the facts regarding the manner in which the original was mutilated, lost or destroyed. If the original is later found, it or the duplicate shall be returned to the Secretary of National Defense.

9. *Renewal of Amateur Operator License.*—An amateur operator license may be renewed upon proper application and a showing that within three months of receipt of the application by the Secretary of National Defense the licensee has lawfully operated an amateur station licensed by the Secretary of National Defense and that he has communicated by radio with at least three other such amateur stations. Failure to meet the requirements of this section will make it necessary for the applicant to again qualify by examination. The application for renewal license shall be submitted at least 30 days before the expiration of the license, together with the license sought to be renewed.

10. *Who may Operate an Amateur Station.*—An amateur station may be operated only by a person holding a valid amateur operator license, and then only to the extent provided by the class of privileges for which the operator license is endorsed. When an amateur station uses radiotelephony (Type A3 emission) the licensee may permit any person to transmit by voice, provided a duly licensed amateur operator maintains control over the emissions by turning the carrier on and off after the transmission has been completed.

11. *Term of Amateur Operator Licenses.*—Amateur operator licenses shall be issued for a term of not more than three years.

12. *When Required.*—An examination is required for a new operator license or for a change in the class of privileges.

13. *Elements of Examination.*—The examination for amateur operator privileges shall comprise the following elements:

(1) *Code test.*—Ability to send and receive in plain language, messages in the International Morse Code at a speed of not less than thirteen (13) words per minute counting five (5) characters to the word, each numeral or punctuation mark counted as two (2) characters;

(2) Amateur radio operation and apparatus, both telephone and telegraph;

(3) Radio laws and regulations affecting amateurs;

(4) Advanced amateur radiotelephony.

14. *Elements Required for Various Privileges.*—Examinations for class A privileges shall include all four examination elements specified in section 13.

Examinations for Class B privileges shall include Elements 1, 2 and 3, as set forth in section 13 .

15. *Manner of Conducting Examinations.*—Examinations shall be conducted by the Department of National Defense in places designated by the Secretary.

16. *Examination Abridgment.*—An applicant for class A privileges who holds a license with class B privileges, shall only be required to pass an examination on the added element No. 4 under section 13, hereof.

An applicant who has held a license of the class specified below within five years prior to the receipt of application shall be given credits for examination elements as follows:

Class of license	Credits
Radiotelegraph, first, second or third	Elements 1 and 2
Radiotelephone, first or second	Elements 2 and 4

17. *Grading.*--Code tests for sending and receiving shall be graded separtely as "PASSED" or "FAILED." A candidate in code tests shall be considered to have failed unless his examination paper is free from omission or other error for a continuous period of at least one minute at the required speed. Failure to pass the required code test shall invalidate the whole examination.

A passing grade of 75 per cent on eacn of the elements specified for a class of license is required.

18. *Eligibility for re-Examination.*—An applicant who fails in an examination for amateur privileges may not take another examination for such privileges within one month.

AMATEUR RADIO STATION LICENSES

19. *Eligibility for Amateur Station License.*—A license for an amateur station may be issued only to a licensed amateur operator who has made a satisfactory showing of control of proper transmitting apparatus and of the premises where such apparatus is located. *Provided, however,* That in the case of an amateur station of the military and naval forces of the Republic of the Philippines, located in approved public quarters and established for training purposes, but not operated by the Government, a station license may be issued to a person in charge of such a station although not a licensed amateur operator.

20. *Eligibility of Corporation or Organization to Hold License.*—An amateur station license shall not be issued to a school, society, company, corporation, association, or other organization; nor for their use: *Provided, however,* That in case of a bona fide amateur radio society of a radio training school holding a valid certificate of recognition from the Secretary of National Defense, a station license may be issued to a licensed amateur operator as trustee for such society or training school.

21. *Location of Station.*—An amateur radio station, and the control point thereof when remote control is authorized, shall not be located on premises owned or controlled by an alien.

The licensee of an amateur station shall not transfer the location of his station without the prior approval of the Secretary of National Defense.

No amateur radio station shall be established on mobile vessels, motor cars, trains or aircrafts. Likewise, the establishment of portable mobile stations shall not be authorized.

22. *License Period.*—A license for an amateur station shall be issued for a term of not more than three years.

23. *Authorized Operation.*—An amateur station license authorizes the operation of the station only at the location specified in the station license.

24. *Renewal of Amateur Station License.*—An amateur station license may be renewed upon application therefor to the Secretary of National Defense, and upon showing that the licensee thereof has lawfully operated such station at least three months during the license term. The application must be submitted, together with the license sought to be renewed, at least 30 days prior to the date of expiration of the license.

25. *Posting of Station License.*—The original of each station license or a facsimile thereof shall be posted by the licensee in a conspicuous place in the room in which the transmitter is located, or shall be kept in the personal possession of the operator while on duty, except when such license has been submitted to the Department of National Defense with application for modification or renewal; or has been mutilated, lost, or destroyed, and application has been made for duplicate.

CALL SIGNALS

26. *Transmission of Call Signals.*—An operator of an amateur station shall transmit its assigned call signal at the end of each transmission and at least once every 10 minutes during transmission of more than 10 minutes' duration.

USE OF AMATEUR STATIONS

27. *Points of Communication.*—An amateur station may communicate only with other amateur stations. However, in emergencies, it may be used also for communication with commercial or Government radio stations. In addition, amateur stations may communicate with any mobile radio station which is authorized by the Secretary to communicate with amateur stations, and with stations or expeditions which may also be authorized to communicate with amateur stations. They may send transmissions to points equipped only with receiving apparatus for the measurement of emissions, observation of transmission phenomena, radio control of remote objects, and for purely experimental purposees.

28. *No Remuneration for Use of Station.*—No amateur station shall be used to transmit or receive messages for hire; direct or indirect, paid or promise; or for handling messages which relate to the business of any person, firm, corporation, association or organization.

29. *Broadcasting Prohibited.*—An amateur station shall not be used for broadcasting any form of entertainment, nor for the simultaneous retransmission, by automatic means, of signals emanating from any class of station other than amateur.

30. *Radiotelephone Tests.*—The transmission of music by an amateur station is forbidden. However, single audio-frequency tones may be transmitted by radiotelephony for the purpose of tests of short duration in connection with the development of experimental radiotelephone equipment.

31. *Plain Language to be Used.*—Amateur communication shall be carried on in plain language in English, Spanish, or the national language of the Philippines.

32. *Communication with Foreign Countries Prohibited.*—Communication between amateur stations in the Philippines and those in foreign countries is prohibited, except when otherwise provided by treaty, agreement or convention.

ALLOCATION OF FREQUENCIES

33. *Frequencies for Exclusive Use of Amateur Stations.*—The following bands of frequencies are allocated exclusively for use by amateur stations:

3.5 — 4.0	MC[1, 2, 5]	220— 225	MC[4]
7.15— 7.3	MC[1]	420— 450	MC[4]
14.1 — 14.3	MC[1, 3]	1,145— 1,245	MC[4]
28.0 — 29.7	MC[4]	2,300— 2,450	MC[4]
50.0 — 54.0	MC[4]	5,250— 5,650	MC[4]
144.0 —148.0	MC[4]	10,000—10,500	MC[4]
		21,000—22,000	MC[4]

NOTES:

1. Operation by all amateur operator licensees using A1 transmissions (Radiotelegraphy).
2. Operation by Class A licensees using A3 (radio telephone-amplitude modulated) reserved for 3,9000–4,000 kcs. A1 transmissions not permitted on this portion of the band.
3. Operation by Class A licensees using A3 (radiotelephone-amplitude modulated) reserved for 14,150 kcs. to 14,250 kcs. A1 transmissions not permitted on this portion.
4. Operation using A1 or A3 transmission by all amateur operator licensees.
5. Operation on this band temporarily suspended.

34. *Use of Frequencies above 300,000 kilocycles.*—The licensee of an amateur station may, subject to

change upon further order, operate amateur stations with any type of emission authorized for such stations and on any frequency above 300,000 kilocycles without separate licenses therefor.

35. *Individual Frequency not Specified.*—Transmissions by an amateur station may be on any frequency within the bands assigned. Sideband frequencies resulting from keying or modulating a transmitter shall be confined within the frequency band used.

EQUIPMENT AND OPERATION

36. *Maximum Power Input.*—The licensee of an amateur station is authorized to use a maximum power input of one kilowatt to the plate circuit of the final amplifier stage of an oscillator transmitter. An amateur transmitter having a power output exceeding 50 watts shall be provided with means for accurately measuring the plate power input to the vacuum tube, or tubes, supplying power to the antenna.

37. *Power Supply to Transmitting.*—The licensee of an amateur station using frenquencies below 60,000 kilocycles shall use adequately filtered direct-current plate power supply for the transmitting equipment to minimize frequency modulation and to prevent the emission of broad signals.

38. *Requirements for Prevention of Interference.*—Spurious radiations from an amateur transmitter operating on a frequency below 60,000 kilocycles shall be reduced or eliminated in accordance with good engineering practice and shall not be of sufficient intensity to cause interference on receiving sets of modern design which are tuned outside the frequency band of emission normally required for the type of emission employed. In the case of A–3 emission, the transmitter shall not be modulated in excess of its modulation capability to the extent that interfering spurious radiation occur, and in no case shall the emitted carrier be amplitude-modulated in excess of 100 per centum. Means shall be employed to insure that the transmitter is not modulated in excess of its modulation capability.

A spurious radiation is any radiation from a transmitter which is outside the frequency band of emission normal for the type of transmission employed, including any component whose frequency is an integral multiple or submultiple of the carrier frequency (harmonics and sub-harmonics), spurious modulation products, key clicks. The frequency of emission shall be as constant as the state of the art permits.

39. *Modulation of Carrier Ways.*—Except for brief tests or adjustments, an amateur radiotelephone station shall not emit a carrier wave on frequencies below 122,000 kilocycles unless modulated for the purpose of communication.

40. *Frequency Measurement and Regular Check.*—The licensee of an amateur station shall provide means for the measurement of the transmitter frequency and establish a procedure for checking it regularly. The measurement of the transmitter frequency shall be made by means independent of the frequency control of the transmitter within the frequency band used.

41. *Logs.*—Each licensee of an amateur station shall keep an accurate log of station operation. Log entries shall include the following data:

(*a*) The date and time of each transmission. (The date need only be entered once for each day's operation. The expression "time of each transmission" which means the time of making a call need not be repeated during the sequence of communication which immediately follows, however, an entry shall be made in the log when "signing off," so as to show the period during which communication was carried on.)

(*b*) The signature of the person manipulating the transmitting key of the radiotelegraph transmitter or the signature of the person operating a transmitter of any other type (Type A–3 or A–4 emission) with statement as to type of emission, and the signature of any other person who transmit by voice over a radiotelephone transmitter (Type A–3 emission). (The signature need only be entered once in the log, provided the log contains a statement to the effect that all transmissions were made by the person named, except where otherwise stated. The signature of any person who operated the station shall be entered in the proper space for his transmissions.)

(*c*) Call letters of the station called. This entry need not be repeated for calls made to the same station during any sequence of communication, provided the time of "signing off" is given.)

(*d*) The input power to the oscillator, or to the final amplifier stage where an oscillator-amplifier transmitter is employed. (This need be entered only once, provided the input power is not changed.)

(*e*) The frequency band used. (This information need be entered only once in the log for all transmissions until there is a change in frequency to another amateur band.)

(*f*) The message traffic handled. (If communications are handled in regular message form, a copy of each message sent and received shall be entered in the log or retained on file for at least one year.)

The log shall be preserved for a period of at least one year following the last date of entry. The copies of record communications and station log, as required under this section, shall be available for inspection by authorized Government representative.

SPECIAL CONDITIONS

42. *Additional Conditions to be Observed by Licensee.*—An amateur station license is granted subject to the conditions imposed in section 43 and 44,

in addition to any others that may be imposed during the term of the license. Any licensee receiving due notice requiring the station licensee to observe such conditions shall immediately act in conformity therewith.

43. *Quiet Hours.*—In the event that the operation of an amateur station causes general interference to the reception of broadcast program with receivers of modern design, such amateur station shall not operate during the hours from 7 o'clock P. M. to 10 P. M., local time, and on Sundays for the additional period from 10 A. M. until 1 P. M., local time, upon such frequency or frequencies as cause such interference.

44. *Operation in Emergencies.*—In the event of emergency affecting domestic government and commercial communication facilities, the Secretary of National Defense may confer with representatives of the amateur service and others, and if deemed advisable, will declare that a state of general communications emergency exists, and will promulgate such additional rules and regulations to be observed by amateur stations and designated area or areas concerned.

GENERAL RULES APPLICABLE TO AMATEUR SERVICE

45. *Applications.*—Applications shall be made in writing under oath of the applicants, on prescribed forms, and submitted in duplicate to the Secretary of National Defense. The required forms may be obtained from the Radio Control Division, Department of National Defense.

46. *Construction Permit Necessary.*—Construction or installation of any station shall not be begun unless a permit therefor has been granted by the Secretary of National Defense. The installation of an additional transmitter, the increase in power of an existing transmitter, the change of location of the station, or the change in the type of emission shall each require a construction permit.

47. *Licenses for Operation of Station Necessary.*—No station shall be operated except under and in accordance with, the provisions of a license issued therefor by the Secretary of National Defense.

48. *Answer to Notice of Violations.*—Any licensee receiving official notice of violation of the provisions of the Radio Control Law or the regulations prescribed thereunder, or the terms and conditions of a license, shall within three days from such receipts, send a written reply direct to the Secretary of National Defense. The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. If the notice relates to some violations, that may be due to the physical or electrical characteristics of the transmitting apparatus, the answer shall state fully what steps if any, are taken to prevent future violations, and if any new apparatus is to be installed, the date such apparatus was ordered, the name of the manufacturer, and the promised date of delivery.

49. *Distress Messages.*—Radio communications or signals relating to ships or aircrafts in distress shall be given absolute priority. Upon notice from any station, government or commercial, all other transmissions shall cease on such frequencies and for such time as may, in any way, interfere with the reception of distress signals or related traffic.

No station shall resume operation until after the need for distress traffic no longer exists, or after it is determined that said station will not interfere with distress traffic as it is then being routed, and said station shall again discontinue if the routing of distress traffic is so changed that said station will interfere. The status of distress traffic may be ascertained by communicating with Government and commercial stations.

The Department may require an effective and continuous watch on the distress frequency 500 kilocycles by certain amateur stations.

50. *Grounds for Suspension or Revocation of Licenses.*—Any license may be suspended or revoked for the following causes:

(*a*) Violating any provision of Act No. 3846, as amended, any regulations promulgated thereunder, or any provision of the International Radio Regulations applicable to the Philippines.

(*b*) Making any false statement in the application for license or in any report required to be submitted by these regulations.

(*c*) Failure to comply with the conditions under which a license is issued.

51. *Revocation of Radio Station Construction Permit of License.*—Whenever the Department shall institute a revocation proceeding against the holder of any radio station construction permit or license, it shall initiate said proceeding by serving upon said licensee an order of revocation effective not less than 15 days after written notice thereof is given the licensee. The order of revocation shall contain a statement of the grounds and reasons for such proposed revocation and a notice of the licensee's right to be heard by filing with the Department a written request for hearing within 15 days after receipt of said order. Upon the filing of such written request for hearing by said licensee the order of revocation shall stand suspended and the Department will set a time and place for hearing and shall give the licensee and other interested parties notice thereof. If no request for hearing on any order of revocation is made by the licensee against whom such order is directed within the time hereinabove set forth, the order of revocation shall become final and effective, without further action of the Department.

52. *Suspension of Operator Licenses.*—No order of suspension of any operator's license shall take effect until 15 days' notice in writing thereof, stating

the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Department at any time within said 15 days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have 15 days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the 15-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt of the Department of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Secretary of National Defense shall deem appropriate. Upon the conclusion of said hearing the Department may affirm, modify, or revoke said order of suspension.

Proceedings for the suspension of an operator's license shall in all cases be initiated by the entry of an order of suspension. Respondent will be given notice thereof together with notice of his right to be heard and to contest the proceeding. The effective date of the suspension will not be specified in the original order but will be fixed by subsequent motion of the Secretary of National Defense in accordance with the conditions specified above. Notice of the effective date of the suspension will be given respondent, who shall send his operator license to the Department on or before the said effective date, or, if the effective date has passed at the time notice is received, the license shall be sent to the Department forthwith.

53. *International Radio Regulations.*—The International Radio Regulations applicable to amateur stations and service and hereby made a part of these rules and regulations.

54. *Penalty Provisions.*—Any person who shall violate any provision of the foregoing regulations, or of the International Radio Regulation shall, as provided in section 12 of Act No. 3846 as amended, be punished by a fine of not more than Six hundred pesos or by imprisonment for not more than six months, or both, for each and every offense.

55. The following fees shall be paid to the Department of National Defense:

(*a*) Amateur radio station construction permit	₱5.00
(*b*) Amateur radio station license for one year	6.00
(*c*) Examination fee for amateur radio operator license	8.00
(*d*) Amateur radio operator license, any class for one year	8.00
(*e*) Construction permit for installation of additional transmitter, for change of location of station, and/or for modification, of amateur station license	5.00
(*f*) Issuance of duplicate construction permit, operator or station license	5.00

AMATEUR RADIO DISTRICTS

56. List of Amateur Radio Districts in the Philippines showing the provinces and cities comprising each district:

District No. 1
- Bataan
- Batangas
- Bulacan
- Cavite
- City of Cavite
- City of Manila
- City of San Pablo
- City of Tagaytay
- Laguna
- Marinduque
- Pampanga
- Quezon (Tayabas)
- Quezon City
- Rizal
- Tarlac
- Zambales

District No. 2
- Nueva Ecija
- Nueva Vizcaya
- Pangasinan
- La Union

District No. 3
- Abra
- Batanes
- Cagayan
- City of Baguio
- Ilocos Norte
- Ilocos Sur
- Isabela
- Mountain

District No. 4
- Albay
- Camarines Norte
- Camarines Sur
- Sorsogon

District No. 5
- Leyte
- Samar

District No. 6
- Antique
- Capiz
- City of Iloilo
- Masbate
- Romblon

District No. 7
- Bohol
- Cebu
- Cebu City
- City of Bacolod
- Negros Occidental
- Negros Oriental

District No. 8
- Mindoro
- Palawan

District No. 9
- Agusan
- Bukidnon
- City of Dansalan
- City of Davao
- City of Zamboanga
- Cotabato
- Davao
- Lanao
- Misamis Occidental
- Misamis Oriental
- Sulu
- Surigao
- Zamboanga

57. All Rules and Regulations which are in conflict herewith are hereby revoked.

RUPERTO K. KANGLEON
Seretary of National Defense

DECISIONS OF THE SUPREME COURT

[No. L-128. March 2, 1946]

JOSE GEUKEKO, petitioner, *vs.* TEOFILO C. SANTOS, respondent

1. PUBLIC OFFICERS; TERM OF OFFICE DISTINGUISHED FROM TENURE OF INCUMBENT; TERM OF OFFICE NOT AFFECTED BY THE HOLD OVER NOR EXTENDED BY REASON OF WAR.—The term of an office must be distinguished from the tenure of the incumbent. The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. The term of office is not affected by the hold over. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent. There is no principle, law or doctrine by which the term of an office may be extended by reason of war. This ruling holds true *a fortiori* in the present case, for petitioner continued to discharge the duties of his office during the occupation, although not under the legitimate government.
2. ID.; HOLD OVER; PROVINCIAL, CITY AND MUNICIPAL OFFICERS NOT ENTITLED TO HOLD OVER; SCOPE OF SUBSECTION (*b*), SECTION 16, OF COMMONWEALTH ACT NO. 357.—Provincial, city and municipal officers are not entitled to hold over. In fact, petitioner himself does not claim to have the right to hold over. Therefore, inasmuch as respondent was appointed to fill the office left vacant *after the term of office* of the petitioner had expired on December 31, 1943, the provisions of subsection (*b*), section 16, of Commonwealth Act No. 357 do not apply to the case at bar, because this subsection refers to vacancies resulting from the death, resignation, removal or cessation of the incumbent *during the term of office.*
3. ID.; ID.; ID.; POLICY OF RECALL ANNOUNCED BY PRESIDENT DOES NOT CONFER LEGAL RIGHT.—The announced policy of the President to re-instate or recall pre-war elected officials except for strong reasons, does not confer a legal right on said officials to appointment, since the policy does not impose upon the President a legal obligation to make such appointment. It is within the exclusive province and discretion of the President to follow strictly or not such policy, and therefore this court can not declare petitioner entitled to the office.

Per PERFECTO, *J.*, concurring:

4. PRECEDENT MAINTAINED.—The complaint in this case must be dismissed on the strength of the legal doctrines maintained in our concurring opinion in the case of Nueno *vs.* Angeles (L-89, 42 Off. Gaz., 1868).
5. PLAINTIFF'S ADMISSION.—In invoking section 16 (b) of the Election Code, plaintiff shows conclusively that he admits he is not entitled, as a matter of personal right, to the position in question.

6. DOCTRINE APPLIED.—On the strength of the legal doctrine laid down in the case of Lumontad *vs.* Cuenco (L-66, 41 Off. Gaz., 894), and according to section 6 of Rule 68, plaintiff lacks the legal personality to institute the present complaint for *quo warranto*.
7. RIGHT OF POLITICAL PARTIES.—The political right to claim to fill a vacant position under section 16 (*b*) of the Election Code belongs, not to any individual, but to the political party concerned.
8. JUDICIAL NOTICE.—Judicial notice may be taken of the fact that, as a matter of contemporary political history, the Chief Magistrate of the Philippines, the one who issued defendant's appointment, belongs to, and is the supreme head of, the Nacionalista Party.
9. PHILOSOPHY OF THE ELECTION CODE.—The provision of section 16 (*b*) of the Election Code is in conformity with the electoral philosophy of recognizing personality in political parties.
10. APPOINTEES; POLITICAL PARTIES; PUBLIC INTERESTS.—In practical democracy, there is no reason for frowning against the practice of chief executive's selecting to positions in the government, not only persons belonging to his own political party, but others belonging to opposing parties, such practice having been followed with great success by President Franklin Delano Roosevelt. In matters of appointment, the most important thing is that public interests will be advanced, and that can be accomplished by the selection of the most fitted, no matter to what party he belongs.
11. MERIT SYSTEM.—The merit system should rule the selection of any appointee to any government position. Partisan considerations must be subordinated to public interests. This aphorism is unassailable. We rank it among the primary principles of a sound political philosophy. There is no better public policy than by abiding by it as an inexorably obligatory rule of conduct and practice.

ORIGINAL ACTION in the Supreme Court. *Quo Warranto.*

The facts are stated in the opinion of the court.

Javier, Palarca & Alba for petitioner.
E. Voltaire Garcia for respondent.

FERIA, *J.:*

Petitioner seeks to oust respondent from the office of Mayor of Malabon, Rizal, on the ground that the former, and not the latter, is entitled to hold said office.

Petitioner was elected Mayor of Malabon in the general election held on December 10, 1940, and qualified as such in January of 1941. Respondent filed an election protest against petitioner in the Court of First Instance of Pasig, Rizal, which was decided against respondent, whereupon he appealed to the Court of Appeals. The decision of the Court of Appeals has not been promulgated to date. For the purpose of deciding the petition in this case, we may assume that the petitioner was definitely elected Mayor of Malabon in the said general election.

Petitioner held the office of Mayor of Malabon throughout the Japanese occupation and after the reoccupation until the official restoration of the Commonwealth Government on February 27, 1945, when all government officials were directed to vacate their posts, and in compliance with said order petitioner vacated his office of Mayor.

On November 5, 1945, respondent was appointed Acting Mayor of Malabon, Rizal, by the President, and qualified on November 9, 1945.

Petitioner bases his claim on three main grounds: First, that his term of office has not yet expired, inasmuch as the period of Japanese occupation during which he continued to serve as Mayor should not be taken into account in fixing the term of his office. Secondly, that, assuming that his term of office had already expired, the Chief Executive should have exercised his appointing power in accordance with section 16(*b*) of Commonwealth Act No. 357, and appointed the petitioner instead of the respondent, because the latter does not belong officially to the Nacionalista political party of which petitioner is a member. And thirdly, that petitioner should have been appointed to the office, on democratic principles and in accordance with the announced policy of the President to reinstate officials elected in the 1940 election, unless there be strong reasons for not doing so.

(1) As to the first ground, in the case of Nueno *vs.* Angeles, promulgated on February 1, 1946 (L–89, 42 Off. Gaz., 1868), this Court held that "the contention that petitioners are entitled to continue in office because they have not completely served for three years due to the war, is untenable, even assuming that they had not discharged the duties of their office during the Japanese occupation of Manila. For the simple reason that the term of an office must be distinguished from the tenure of the incumbent. The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. The term of office is not affected by the hold over. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent. There is no principle, law or doctrine by which the term of an office may be extended by reason of war. This ruling holds true *a fortiori* in the present case, for petitioner continued to discharge the duties of his office during the occupation, although not under the legitimate government.

(2) With respect to the second, we have also decided in the case of Nueno *vs.* Angeles (*supra*) that provincial, city

and municipal officers are not entitled to hold over. In fact, petitioner himself does not claim to have the right to hold over. Therefore, inasmuch as respondent was appointed to fill the office left vacant *after the term of office* of the petitioner had expired on December 31, 1943, the provisions of subsection (*b*), section 16, of Commonwealth Act No. 357 do not apply to the case at bar, because this subsection refers to vacancies resulting from the death, resignation, removal or cessation of the incumbent *during the term of office.*

But even assuming, for the sake of argument, that said subsection (*b*) is applicable, as the President is not required by law to appoint the petitioner or any other particular member of the *Nacionalista Party,* petitioner can not, in his own behalf or in that of any other person belonging to his party, claim to be entitled to the office of Mayor of Malabon.

(3) And as to the third ground, the announced policy of the President to reinstate or recall pre-war elected officials except for strong reasons, does not confer a legal right on said officials to appointment, since that policy does not impose upon the President a legal obligation to make such appointment. It is within the exclusive province and discretion of the President to follow strictly or not such policy, and therefore this Court can not declare petitioner entitled to the office.

In view of the dissenting opinion of several Justices of this Court which holds that under our present laws, elective municipal, city and provincial officers are entitled to hold over, reiterating in this case their stand in the case of Nueno *vs.* Angeles (L–89, *supra*) recently promulgated, we deem it proper to emphasize here that the dissenting opinion in the Nueno case is based upon an incorrect premise.

The rule enunciated in McQuillin, Municipal Corporations, 2nd ed., Vol. 11, article 507, is the following: "In the absence of express provisions and *unless* the *legislative intent* to the contrary is manifest, municipal officers hold over until their successors are provided." This is substantially the same rule as that enunciated in 46 Corpus Juris, 968, which we have quoted in our decision in the said case of Nueno *vs.* Angeles, which says: "In the absence of an *express or implied* constitutional or statutory provision to the contrary, an officer is entitled to hold his office until his successor is appointed or elected and has qualified."

The dissenting opinion of the minority enunciates the same rule as follows: "In the absence of an *express constitutional or statutory provision to the contrary,* public officers have the right, as well as the duty, to continue in

office under the principle of hold over until their successors are duly elected or appointed and qualified, unless there is a manifest implied intention in the Constitution or the laws to prohibit such hold over."

After enunciating the rule, however, and stating that the minority agrees with the majority in that the suppression (by Act No. 2774) of the provision for holding over found in the original provision of section 2439 of the Administrative Code, could not imply a legislative intent to abolish the rule of hold over, since that phrase (provision) would any way be a mere surplusage for the reason that a similar provision was found in the second paragraph of section 2440 of the Administrative Code, the minority concludes without much ado that such suppression "does not imply an intention—much less a manifest intention—on the part of the legislature to prohibit the right to hold over to the members of the Municipal Board of Manila."

We say without much ado, because the dissenting opinion of the minority does not say a word on the fundamental ground of the majority opinion in the said Nueno *vs* Angeles case, to wit: That, subsequently, the remaining hold over provision in said section 2440, as well as the identical provisions in sections 2074 and 2177 of the Administrative Code relating to elective provincial and municipal officers, respectively, were expressly repealed by section 184 of Commonwealth Act No. 257, known as the Election Law; and that *said repeal* and the enactment of section 10 of said Act No. 257, which provides for the filling of all vacancies, temporary or otherwise, which might occur during and after the expiration of the term of office, so as to avoid the necessity and even the occasion for holding over, *clearly show the manifest intention of Congress to suppress the hold over.*

Before concluding, it may not be amiss to say that the authorities or cases cited in the dissenting opinion in support of the minority conclusion were out of place. It is evident that the rule of hold over applies where there is no express or implied legislative intent to the contrary. But it can not be applied if there is such legislative intent. Therefore, it is improper to quote cases decided in the United States, as the minority did in said dissenting opinion, in which the right of certain officers to hold over was recognized or declared, for in said cases, as in all others, the courts have applied the rule because the legislative intent, express or implied, to the contrary was not manifest. In the same way, it would have been improper and misleading for the majority to cite or quote cases or decisions in support of our conclusion (there are also many, some quoted in the concurring opinion), for in such cases

the rule has not been applied because there was an express or implied legislative intent to the contrary.

In view of all the foregoing, we hold that the petitioner is not entitled to the office of Mayor of Malabon held by the respondent, and has no right to institute an action of *quo warranto* against the latter according to section 6, Rule 68, of the Rules of Court. It is not, therefore, necessary for us to discuss whether or not the respondent is entitled to the office or is illegally withholding it as claimed by the petitioner (Nueno *vs.* Angeles, *supra*).

Petition in this case is therefore dismissed with costs to petitioner. So ordered.

Jaranilla, De Joya, Pablo, Bengzon, and *Briones, JJ.,* concur.

PERFECTO, *J.,* concurring:

Petitioner was proclaimed elected as Mayor of Malabon, Rizal, in the local elections held on December 10, 1940. In January, 1941, he assumed office.

Defendant filed a protest against the election of plaintiff. After trial, the Court of First Instance of Rizal rendered decision dismissing the protest.

On November 8, 1945, defendant was appointed Mayor of Malabon. The next day he started to discharge the duties of the position.

Plaintiff alleges he has not been legally removed or suspended from office, did not resign or abandon the same, is not accused of any crime, and there is no pending case of treason or collaboration against him. That as a matter of legal right and based on democratic principle, he is entitled "to reinstatement to his former post," he being the people's choice in 1940, and that defendant, being the defeated candidate, is holding his office against the law and the popular will.

Defendant answered alleging that, in a decision penned by Justice Francisco Enage, concurred in by Justices Sabino Padilla, Marceliano R. Montemayor, and Serafin P. Hilado, the Court of Appeals reversed the decision of the Court of First Instance, declaring defendant as the elected mayor of Malabon with ten votes majority over plaintiff. The decision was rendered on February 26, 1942, but on June 16, after almost four months, the promulgation of the decision was temporarily suspended, following instructions of the then Commissioner of Justice.

Defendant alleges also that the term of office in dispute between plaintiff and defendant had already expired; that plaintiff was appointed and duly qualified as mayor of Malabon under the Philippine Executive Commission and the "Republic" of the Philippines during the Japanese occu-

pation, so that when the Commonwealth of the Philippines was reëstablished on February 27, 1945, the plaintiff was holding no office under the Commonwealth; that the wisdom or unwisdom, the motives or reasons, the justice or injustice, of the exercise of the appointing power by the Chief Executive cannot be inquired into by the judiciary under the principle of separation of powers of government; that among the well-founded considerations why plaintiff does not merit the trust of the appointing power may be mentioned:

"(*a*) The plaintiff actively and sincerely collaborated with the Japanese during the Japanese occupation;

"(*b*) The plaintiff was the Chairman and Campaign Manager of the Malabon Chapter of the KALIBAPI, a pro-Japanese institution for the propagation among others of the ideas of the Greater East Asia Co-Prosperity Sphere, and earnestly campaigned for its principles to the extent of ordering distributors of prime commodities not to give rations of family heads who did not sign the Kalibapi membership cards;

"(*c*) The plaintiff zealously campaigned for the surrender of guerrillas and firearms during the Japanese occupation;

"(*d*) The plaintiff gave out to the Japanese Army able-bodied residents of Malabon for forced labor against the United States forces; etc.; and

"(*e*) The plaintiff was not the choice of the people in the elections of December 10, 1940, for Mayor of Malabon."

Defendant alleges also that after the liberation, Malabon had no mayor until April 12, 1945, when Victor Gaza was designated to act in said position; that it is the policy of the state that collaborationists be not placed in positions of political and economic influence.

Plaintiff alleges in his reply that no such decision of the Court of Appeals as mentioned by defendant had been promulgated; that according to section 16 (*b*) of the Election Code, the position of mayor of Malabon being vacant, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, and in the present case "morally and legally" the appointment should go to the plaintiff or to his vice-mayor or, at any rate, to some other person belonging to the *Nacionalista Party*, the one which came out victorious in the last local elections.

On the strength of the legal doctrines we have maintained in our concurring opinion in the case of Nueno *vs.* Angeles (L–89, 42 Off. Gaz., 1868), we also concur in the majority's decision to dismiss the complaint in this case.

Although the affidavit signed by the clerk of the Court of Appeals, presented as Exhibit D of plaintiff's reply, corroborates defendant's allegation to the effect that the Court of Appeals rendered a decision declaring defendant as

elected mayor of Malabon, Rizal, instead of plaintiff—which fact at least makes doubtful who the people's choice was in the local elections of December 10, 1940—the controversy in the electoral protest is immaterial in the present case, it appearing that the term of office of the position in dispute between plaintiff and defendant had already expired in December, 1943, and, therefore, no one can claim now the right to occupy the position of mayor of Malabon on the strength of the result of the 1940 elections.

Plaintiff's theory that, on the hypothesis that he was the one who was elected in 1940, the position of mayor which became vacant due to failure to elect the officer who should serve for the 1944–1946 term of office, must be filled by the vice-mayor or any other person belonging to the *Nacionalista Party* to which plaintiff belongs, invoking to said effect section 16 (*b*) of the Election Code, shows conclusively that plaintiff himself admits that he is not entitled, as a matter of personal right, to the position in question. This being the case, under section 6 of Rule 68 of the Rules of Court and on the strength of the legal doctrine we laid down in the case of Lumontad *vs.* Cuenco (L–66, 41 Off. Gaz., 894), plaintiff lacks the legal personality to institute the present complaint for *quo warranto*.

Under the provision of section 16 (*b*) of the Election Code, it is clear that the right to claim to fill a vacant position, if there is any, belongs not to any individual, but to the political party concerned.

In the present case, even in the disputed supposition that it was the *Nacionalista Party* which won the local elections in Malabon, and not the *Democrata Party* to which defendant belongs, it appears that the appointing power in the present is, better than any other, the one qualified to represent the *Nacionalista Party*. We can take judicial notice, as a matter of contemporary political history, that the present Chief Magistrate of the Philippines, the one who issued defendant's appointment, belongs to, and is the supreme head of, the *Nacionalista Party*.

It is evident that the provisions of the Election Code with which we are dealing has been drafted with the avowed purpose of protecting the political rights and interests, not of the individuals, but of political parties; and this is in conformity with the philosophy of the Election Code to recognize personality in political parties, this fact being better illustrated in the provisions regarding the appointment of election inspectors and poll clerks.

The former political affiliation of the appointee appears not to have more weight than the political interests of the party entitled to have the position in dispute. In practical democracy, there is no reason for frowning against the

practice of chief executive's selecting to positions in the government, not only persons belonging to his own political party, but others belonging to opposing parties, such practice having been followed with great success by President Franklin Delano Roosevelt. The most important thing is that, with the appointment, public interest will be advanced, and that can be accomplished by the selection of the most fitted, no matter to what party he belongs. The merit system should rule the selection of any appointee to any government position. Partisan considerations must be subordinated to public interests. This aphorism is unassailable. We rank it among the primary principles of a sound political philosophy. There is no better public policy than by abiding by it as an inexorably obligatory rule of conduct and practice.

Our vote is for the dismissal of the complaint.

HILADO, *J.*, with whom concur MORAN, *C. J.*, OZAETA and PARAS, *JJ.*, dissenting:

For the reasons and arguments set forth in our dissenting opinion in case (L–89, 42 Off. Gaz., 1868), Nueno *vs.* Angeles, wherein we maintain the theory that, under our laws existing before the Pacific War, which remain the same up to the present as regards the questions involved in this case, elective provincial and municipal officials are entitled to the right to hold over until their successors have been duly elected or appointed and qualified, which reasons and arguments—be it said with all due respect—the majority opinion herein has, we think, not successfully met, we dissent from said opinion.

Quite apart, nevertheless, from our arguments predicated upon the principle of hold over, the specific provisions of the different subsections of section 16 of the Election Code, particularly subsection (*o*), would seem clearly to support our solution of the problem here presented. For the sake of convenience, let us restate our views on this aspect of the case as stated in our aforesaid dissent, with some slight changes in the mode of presentation.

Section 16 (*a*) of the Election Code refers to a temporary vacancy in an elective local office and provides for the mode of filling the same. The vacancy being temporary, the appointment to be made by the President or the Provincial Governor, as the case may be, as therein authorized, necessarily has to be likewise temporary—coeval with the vacancy itself. When the temporary vacancy ceases by the return to office of the incumbent, the temporary substitute gives way to him. (Revised Administrative Code, section 2439.) This is clearly not the case of a vacancy caused by the expiration of the incumbent's term where there is no

hold over. In the latter case, the vacancy is permanent and naturally the election or appointment, which ever is authorized by law, of the successor to fill that vacancy has to be permanent.

Evidently, the phrase "temporary vacancy" used by our legislators in section 16 (*a*) of the Election Code refers to a case where the office has not lost its incumbent permanently so as to necessitate the election or appointment of a permanent substitute. Undoubtedly, the Philippine National Assembly which enacted the Election Code had the legitimate power to use this phrase and the word "vacancy" and to give them the meaning that they saw fit without being bound by technical definitions of the same terms in other jurisdictions. If we were to give the term "vacancy" in said subsection the meaning that the office is without an incumbent, then, in our opinion, the vacancy would no longer be temporary but permanent. As we understand the provision, the lawmaker had to devise a phrase to denote the situation of an office having an incumbent but who is unable to exercise or is not actually exercising its functions due to some temporary cause or reason.

Subsection (*b*) deals with the case of an elective local office which becomes vacant as a result of the death, resignation, removal or cessation of the incumbent. It also provides the method of filling the vacancy therein referred to. In the very nature of things, there can be no question of hold over here, as the incumbent who dies, resigns, is removed or ceases, cannot possess such a right. This is unquestionably not the case before us.

Subsection (*c*) speaks of the case where the election for a local office "fails to take place on the date fixed by law, or such election results in a failure to elect." And it directs the procedure primarily to be followed "to fill said office," and it is this:

> "* * * the President shall issue as soon as practicable, a proclamation calling a special election to fill said office."

Secondarily, that is, in case such special election "has been called and held and shall have resulted in a failure to elect, the President shall fill the office by appointment." [Subsection (*e*).]

Thus for the specific contingency spoken of in subsection (*c*)—which is our case—the law provides a special procedure for the selection of the incumbent's successor, viz.; primarily, by a special election which shall be called "as soon as practicable" by Presidential proclamation; and, secondarily [under subsection (*e*)], in case such special election has been *called* and *held* and shall have resulted in a failure to elect, then by Presidential appointment.

The phrase "as soon as practicable" in said subsection (*c*), in our opinion, clearly indicates that the legislator foresaw the possibility of delay in the issuance of the required Presidential proclamation or the holding of the special election, the duration of which delay—long or short—he had no means of foretelling. But the legislator, of course, knew that in case of such delay, whether short or long, the office would be left vacant if he should *prohibit* the incumbent from holding over in the meantime. He has not expressly imposed this prohibition. As a general proposition, the country had nothing to gain and everything to lose by such prohibition. Shall we *imply* that the lawmaker intended it? We are not prepared to indulge such implication. Neither are we prepared to believe that the legislature excluded the possibility of war being the cause of the delay—when the Election Code was enacted the possibility of another world war and its involving the Philippines was not at all out of the question. In the absence of a positive contrary showing, we must presume that the representatives of the people in the legislature acted not only with foresight but with farsightedness and wisdom, and accordingly intended against leaving the office vacant, pending the selection and qualification of the incumbent's successor according to the procedure which they were laying down.

As already pointed out, that selection could only be by Presidential appointment under subsection (*e*) in case the special election required by subsection (*c*) has been *called* and *held* and has resulted in a failure to elect.

The Legislature, in the case spoken of in said subsection (*c*) did not see fit to authorize the President to appoint a successor to serve during the interregnum from the date fixed by law for the election (which has not taken place) till the date of the actual election and qualification of a permanent successor—not even under subsection (*a*). We say not even under subsection (*a*) because if there is no hold over, as maintained by the majority, the vacancy created by the expiration of the term—such expiration is understood in the case of subsection (*c*)—is *permanent* and not temporary as in the case of subsection (*a*). An appointment to fill a permanent vacancy in cases authorized by law is necessarily permanent—"for the unexpired term of the office" in the words of subsection (*f*). If there is hold over, as maintained by us, it is clear that no appointment would be authorized under the same subsection (*a*) either.

We understand a vacancy to be permanent where the office permanently loses its incumbent by some physical or

legal reason of a permanent nature—such as expiration of the term, death, resignation, removal, abandonment, permanent physical or mental disability or the like, and speaking concretely of a vacancy created by the expiration of the term, to say that it may be filled by appointment, is to render impossible the special election provided for in subsection (*c*) because under subsection (*f*) the appointee would, in such case, "hold the same (office) *for the unexpired term*" (Italics supplied), which in the same case, could only refer to the next ensuing term.

Subsection (*d*) is concerned with the case of a local officer-elect who dies before assumption of office or, having been elected provincial or municipal officer, his election is not confirmed by the President for disloyalty, or who fails to qualify, for any reason. Admittedly, this is not our case.

Subsection (*e*) has already been considered in connection with subsection (*c*).

Subsection (*f*) merely provides that the person appointed or elected to fill a vacancy in an elective provincial or municipal office shall hold the same for the unexpired term of the office. It clearly refers to a permanent vacancy. And referring, as it does, to an *elective* provincial or municipal office, in case the next election for said office should fail to take place on the date fixed by law, or should such election result in a failure to elect, then again subsection (*c*) would be brought into play, and if it fails to secure an election, then subsection (*e*) will provide the remedy.

It is self-evident that if the person appointed or elected to fill a vacancy in an elective provincial or municipal office is to hold the office "for the unexpired term," in the words of subsection (*f*) of section 16 of the Election Code, such appointment or election is permanent, as contradistinguished from a temporary one. If so, said vacancy must of necessity be likewise permanent—it would be a contradiction in terms to say that a temporary vacancy is to be filled by a permanent appointment or election. Hence, the appointment or election mentioned in said subsection (*f*) cannot refer to the case of subsection (*a*), firstly, because the latter subsection speaks only of appointment and not election, and, secondly, because it is concerned with a temporary vacancy. Therefore, subsection (*f*) can only relate to the cases of subsections (*b*), (*c*), (*d*), and (*e*). And since, as above demonstrated, subsection (*f*) refers to a permanent vacancy, it is clear that the vacancy involved in subsections (*b*), (*c*), (*d*), and (*e*) is a permanent vacancy. Now, that vacancy is in the very nature of things permanent *from its inception down to the end.* So that,

in the specific case of subsection (*c*), for example, we cannot say that in one part of its duration the vacancy is temporary, and in the remaining part it is permanent. If, then, there can be no temporary vacancy under subsection (*c*), there can be no temporary appointment in its case under the authority of subsection (*a*).

Petition dismissed.

[CA-No. 20. March 12, 1946]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MOISES BENEDICTO, defendant and appellant

1. CRIMINAL LAW; ROBBERY; IDENTIFICATION OF ACCUSED; SUFFICIENCY OF EVIDENCE; CASE AT BAR.—Under the facts stated in the opinion, it was held that the identification of the accused was sufficiently proved.
2. ID.; ID.; NEW TRIAL, WHEN UNNECESSARY.—It is unnecessary to grant a new trial when there is no assurance that the witnesses to be introduced could not have been presented at the original hearing, and their testimony will not materially improve defendant's position.

APPEAL from a judgment of the Court of First Instance of Batangas. Gonzales, J.

The facts are stated in the opinion of the court.

Miguel Tolentino for appellant.
Acting Assistant Solicitor-General Barcelona for appellee.

BENGZON, *J.:*

Agripino Barrion lived with his family in their house at the barrio of Bancoro, municipality of Taal, Province of Batangas. In the first hours of November 27, 1943, he noticed the presence of many persons, about fifty, in his yard, one of whom inquired whether he had some rope. Having replied in the negative, he was asked for fire to light their cigarettes; he told them to wait, and then he lighted a match and his gas lamps. But the persons outside forced the door open, and three entered the dwelling, followed by others. One of these immediately hit Agripino on the head with the butt of a pistol, and thereby floored him unconscious. His wife, Antonina Villanueva, screamed, even as her daughter, Primitiva, rebuked the assailants. Their attention drawn to the women, the intruders bound and maltreated Antonina, to force disclosure of the money and valuables in the household. Two others pulled Primitiva towards the room, taking undue liberties with her person. While resisting her captors, Primitiva saw and recognized the accused, Moises Benedicto, as the latter peeped through the door of the balcony, and later

appeared at the door of the sala. Carried to the room, Primitiva Barrion continued to resist, until she was cuffed in the ear and instantly put out. After the robbers had left, the Barrions found that their money, jewels, and clothing, amounting to ₱2,770, had been taken away.

That same day, Agripino Barrion, his wife and daughter, went to town to report to the chief of police, Numeriano Manalo, before whom they subscribed the affidavits (Exhibits B, C and D), relating the above incidents of the robbery, and pointing specifically to the herein defendant, Moises Benedicto, as one of the bandits. The result was this criminal prosecution, culminating in a judgment of conviction in the Batangas court. The defendant has appealed, challenging the sufficiency of the evidence. In a motion for new trial, submitted to this court, he proposes to introduce other witnesses to corroborate his defense of *alibi*.

The only issue is whether appellant participated in the plunder which undeniably occurred at the time and place indicated.

We have no doubt that he did. That very morning, he was mentioned to the chief of police by Primitiva Barrion and her mother. They both recognized his face by the light of the gas lamps, having known him before as a resident of the neighboring barrio of Saimsim. Their testimony immediately after the event should be entitled to much weight, not only because of the freshness of their recollection, but also because such prompt denunciation excluded the probability of fabrication, or the couching by other persons interested against the accused. In the face of such identification, defendant's attempt to demonstrate an *alibi* had necessarily to fail, what with the circumstance that, at best, he proved his presence in a barrio of Talisay (Binirayan) at 7:30 p. m., November 26, and at 6 o'clock the following morning, without showing it was impossible for him, in the interval to proceed to Bancoro and return—a distance of only two kilometers which, according to witnesses, could be covered by sailboat in three hours.

In this connection, it should be stated we deem it unnecessary to grant the new trial applied for. There is no assurance that the witnesses to be introduced could not have been presented at the original hearing. And their testimony will not materially improve defendant's position. It would merely establish the alleged fact that in the evening of November 26, the accused saw Julian Valencia and Fernando Maranan at a meeting of the "Federation." And without specifying the hour they separated, such alleged meeting could not clearly be incompatible with defendant's presence at Bancoro with the gang of robbers.

Wherefore, despite his attorney's earnest efforts to clear

him, defendant must be declared guilty, as found by the trial judge.

The crime is punished by article 294, paragraph 5, of the Revised Penal Code, with *prisión correccional* to *prisión mayor* which, in this case, should be imposed in the maximum degree in view of the aggravating circumstances of dwelling and nocturnity.

Pursuant to the Indeterminate Sentence Law, and in accordance with the recommendation of the Solicitor-General, appellant is sentenced to imprisonment for not less than six (6) months of *arresto mayor* nor more than ten (10) years of *prisión mayor*, to indemnify the offended parties Agripino Barrion and his wife in the amount of ₱2,770, and to pay the costs. Thus modified, the appealed judgment will be affirmed.

Ozaeta, De Joya, Perfecto, and *Hilado, JJ.,* concur.

Judgment modified.

[CA-No. 174. March 12, 1946]

JOSE B. ESCUETA, plaintiff and appellee, *vs.* AQUILINO PANDO, defendant and appellant

OBLIGATIONS AND CONTRACTS; RESOLUTION OF RECIPROCAL OBLIGATIONS; JUDICIAL INTERVENTION.—Under article 1124 of the Civil Code the right to resolve reciprocal obligations, in case one of the obligors shall fail to comply with that which is incumbent upon him, is deemed to be implied. But that right must be invoked judicially; for the same article also provides: "The court shall decree the resolution demanded, unless there should be grounds which justify the allowance of a term for the performance of the obligation."

APPEAL from a judgment of the Court of First Instance of Rizal. Diaz, J.

The facts are stated in the opinion of the court.

Santos & Kapaluñgan for appellant.
Bustos & Tablan for appellee.

OZAETA, *J.:*

The facts of this case are not disputed. On February 14, 1933, Eleuteria Magsarile, the wife of the plaintiff Jose B. Escueta, purchased from the defendant three lots of the Pasay Obrero Subdivision at a price payable in monthly instalments spread over a period of ten years, with the stipulation that if the buyer should fail to pay any of the monthly instalments within thirty days after maturity the contract of sale could be rescinded and annulled and the vendor would be at liberty to dispose of and sell said lots to another person as if the contract had never been entered

into, and that in case of such rescission all the sums of money paid in virtue of the contract should be considered as rents for the use of the property.

On May 28, 1934, the present plaintiff instituted civil case No. 5863 of the Court of First Instance of Rizal to annul the aforesaid contract of sale entered into by and between his wife and the defendant and to recover all sums paid by her on account of said contract. That case was decided by the court on June 19, 1935, in accordance with the stipulation of the parties which read as follows:

"Las partes convienen y estipulan:

"*Primero:* Que el demandado reconoce que la esposa del demandante ha hecho pagos a cuenta de los contratos referidos en la demanda en la suma total de ₱787.89;

"*Segundo:* Que ofrece al demandante y a su esposa Eleuteria Magsarile acreditar dicha cantidad de ₱787.89 a uno de los lotes en cuestión u otro más barato de la subdivisión que escogieran dichos esposos;

"*Tercero:* Que el demandante acepta la oferta del demandado y previa consulta con su señora, va a escoger de entre los tantos lotes de la subdivisión un lote para que las partes puedan ejecutar u otorgar el contrato correspondiente igual al formulario unido a la demanda como Exhíbit A.

"*Cuarto:* Que la próxima mensualidad para el pago de dicho lote que escogiera el demandante comenzará el día 15 de julio de 1935, según y conforme a la suma que resultare del cómputo correspondiente igual al cómputo que ordinariamente hace la subdivisión.

"Por tanto, las partes renuncian a seguir este asunto, y bajo las bases arriba estipuladas, piden que se dicte sentencia de acuerdo con las mismas, sin especial pronunciamiento en cuanto a las costas."

On August 6, 1936, a writ of execution of the judgment entered in said case was issued at the instance of the defendant. Said writ was not accomplished because the plaintiff could not be located by the sheriff. On October 9, 1936, an alias writ of execution was issued, of which the plaintiff was notified; whereupon he chose lot No. 12, block No. 2, of the Pasay Obrero Subdivision. Informed by the sheriff of that choice, the defendant advised the plaintiff through the sheriff that the price of the lot chosen by him was ₱1,590, that the monthly instalment thereon was ₱13.25, and that after crediting the plaintiff with the sum of ₱787.89, the balance of the purchase price was ₱802.11, of which the total sum of ₱198.75 corresponding to the monthly instalments from July 15, 1935, to October 15, 1936, was already due at that time. The sheriff requested the plaintiff to deposit in his office the last-mentioned sum, but the plaintiff refused to do so on the ground that he was not under obligation to begin paying the instalments until after the contract of sale was signed, and that he would prefer to pay the balance of the purchase price in one lump sum provided he was given a discount in consideration of the cash

payment. On November 21, 1936, the sheriff returned to the court the alias writ of execution together with the letters he had received from the attorneys of the parties in the sense above indicated. The formal contract of sale of the lot chosen by the plaintiff, which the parties were bound to sign by their agreement and by the judgment, was never signed.

On July 6, 1937, the defendant sold the said lot No. 12 to Abundia Romero and Dionisio Bravo.

In 1940 the plaintiff on his part procured an alias writ of execution to compel the defendant to sell to him the said lot No. 12 or any other unsold lot of the subdivision, but the sheriff was informed by the defendant that all the lots had already been sold.

Based upon the foregoing facts the plaintiff, on April 7, 1941, commenced the present action against the defendant to recover the sum of ₱787.89, with legal interest thereon, from April 15, 1940, in view of the impossibility on the part of the defendant to sell to him lot No. 12 or any other lot of the subdivision. The theory of the plaintiff is that the defendant had no right to dispose of all his lots without the knowledge of the plaintiff and without the authority of the court.

The defendant pleaded that he sold all the lots of his subdivision in good faith and only after the plaintiff had refused to comply with the agreement and the judgment entered in civil case No. 5863; and that under paragraph 7 of the contract of sale entered into on February 14, 1933, by and between the defendant and plaintiff's wife, the defendant had the right to rescind the contract and keep the payments made thereon as rents of the property.

The trial court sustained the plaintiff's contention and rendered judgment in his favor, ordering the defendant to pay to the plaintiff the sum of ₱787, with interest thereon from July 6, 1937, and the costs. From that judgment the defendant appealed to the Court of Appeals. On August 25, 1943, the First Division of that court certified the case to the Supreme Court on the ground that the same involved questions of law only.

The question to decide is whether upon the facts above stated the plaintiff is entitled to recover from the defendant the sum of ₱787.89 which his wife had paid on account of the purchase price of certain lots and which the defendant subsequently agreed to credit to the plaintiff as a part of the purchase price of another lot to be chosen and bought by the plaintiff from the defendant.

The contract between plaintiff's wife and the defendant, which the latter invokes in his defense, was novated and extinguished by the agreement of the parties which was

submitted to and approved by the court on June 19, 1935, in civil case No. 5863. (*See* articles 1203 and 1204, Civil Code.) It is therefore the latter agreement that governs the rights of the parties in this case. Under that agreement the defendant was bound to credit the plaintiff with the sum of ₱787.89, and the plaintiff in turn was bound to choose one of the lots of defendant's subdivision, to sign the corresponding contract of purchase and sale on instalments upon the same terms as those contained in the contract form (Exhibit A), and to begin paying the monthly instalments on July 15, 1935. After choosing lot No. 12 the plaintiff had no right to refuse to sign the formal contract and to pay the instalments beginning July 15, 1935, nor to demand other terms than those already agreed upon. Upon his refusal to do so in spite of the writ of execution issued by the court to enforce the agreement, the defendant could and should have moved the court to punish him for contempt unless he complied with the judgment. But the defendant did not do that. He did not insist upon his right under his agreement with the plaintiff and the judgment of the court.

The defendant could not, by himself alone and without judicial intervention, resolve or annul the agreement. Under article 1124 of the Civil Code the right to resolve reciprocal obligations, in case one of the obligors shall fail to comply with that which is incumbent upon him, is deemed to be implied. But that right must be invoked judicially; for the same article also provides: "The court shall decree the resolution demanded, unless there should be grounds which justify the allowance of a term for the performance of the obligation."

By the agreement in question the defendant bound himself to credit the plaintiff with the sum of ₱787.89 on the purchase price of the lot to be selected by the latter, and the plaintiff on his part bound himself to sign the corresponding contract. There is no stipulation to the effect that should the plaintiff fail or refuse to fulfil his part of the agreement he would forfeit said sum to the defendant.

While it is true that the plaintiff agreed to sign a contract containing among others the following stipulations embodied in the contract form (Exhibit A), to wit:

"5. El propietario entregará la posesión de dicha parcela de terreno al comprador al firmarse este documento y pagarse el primer plazo.

* * * * * * *

"7. Si el comprador deja de hacer cualquiera de los pagos mensuales convenidos dentro de los 30 días de su vencimiento este contrato podrá ser considerado como rescindido y anulado, y el propietario quedará en libertad de disponer de dicha parcela de

terreno a otra persona, en la misma forma como si este contrato nunca se hubiera celebrado. En ese caso de rescisión todas las sumas de dinero pagadas en virtud de este contrato serán consideradas como rentas por el uso de la propiedad y el comprador por la presente renuncia a todo derecho a reclamar la devolución de las mismas, y se obliga a vacar el terreno."

And while it is clear that under article 1279 of the Civil Code the defendant had the right to compel the plaintiff to sign such contract, it is evident that until and unless that contract was signed the defendant could not invoke the stipulation of forfeiture due to the failure of the buyer to pay any instalment. It is true that article 1258 of the Civil Code provides as follows:

"ART. 1258. Contracts are perfected by mere consent, and from that time the parties are bound, not only to the performance of that which has been expressly stipulated, but also with respect to all the consequences which, according to the character of the contract, are in accordance with good faith, custom, and law."

But in the instant case the execution of a formal contract of sale containing a description of the property sold and the agreed price thereof, was an indispensable prerequisite to the operation of the forfeiture clause agreed upon by the parties. That clause was based on the assumption that the buyer had been given the possession and enjoyment of the lot he agreed to buy and that the payments already made thereon were to be considered as rents in case he defaulted in any subsequent payment; but since by the terms of the agreement the delivery of the possession of the lot was to be made only upon the signing of the contract and the payment of the first instalment, it is evident that such assumption did not hold true in this case. The defendant cannot claim the sum in question as rent of a lot which he has never delivered to the plaintiff.

The only legal basis upon which the defendant could claim the right to retain the sum in question would be that he suffered damages in that amount by reason of the failure or refusal of the plaintiff to fulfil his part of the agreement. But since he did not claim and prove such damages in this case, we find no ground upon which to sustain his contention that he is not bound to refund the said sum.

We find, however, that defendant and appellant's fourth assignment of error with respect to the date from which legal interest on the sum adjudged is to run, is well taken. Interest should have been awarded from the date of the filing of the complaint and not from the date the defendant sold lot No. 12 to somebody else. Indeed, the plaintiff himself did not so claim in his complaint.

Wherefore, with the modification that legal interest on the sum awarded by the trial court shall be computed from

April 7, 1941, the date of the filing of the complaint, the judgment is affirmed. We make no pronouncement as to costs in this instance, considering that the plaintiff himself was not free from blame.

De Joya, Perfecto, Hilado, and *Bengzon, JJ.,* concur.

Judgment modified.

[No. L-212. March 12, 1946]

NARCISA DE LA FUENTE and her husband, JOSE TEODORO, JR., petitioners, *vs.* FERNANDO JUGO, Judge of First Instance of Manila, and LUIS BORROMEO, respondents.

1. EXECUTION; POWER OF COURT OF FIRST INSTANCE TO ORDER EXECUTION OF JUDGMENT OF MUNICIPAL COURT AFTER RENDITION OF JUDGMENT BY THE FORMER.—Inasmuch as the judgment of the Municipal Court had been superseded by the judgment of the Court of First Instance rendered on August 21, 1945, the latter could not order the execution of said judgment of the Municipal Court which had become *functus oficio.*
2. ID.; ID.; LOSS OF JURISDICTION OF COURT OF FIRST INSTANCE AFTER PERFECTION OF APPEAL; APPLICABILITY OF SECTION 9 OF RULE 41 TO SPECIAL CIVIL ACTIONS.—When the motion for a writ of execution was filed by petitioners on November 12, 1945, the Court of First Instance had already lost jurisdiction over the case, in accordance with section 9, Rule 41, of the Rules of Court, which is applicable to ordinary as well as to special civil actions. For the respondent had appealed from the judgment of the Court of First Instance to this court, and the record on appeal filed by the defendant and appellant was approved on October 24, 1945. And as the Court of First Instance had already lost jurisdiction over the case when the motion for execution was filed, the respondent Judge had no power and, consequently can not be compelled by mandamus to order the execution of the judgment not only of the justice of the peace, assuming that it was still in force, but of the very Court of First Instance presided over by him.

ORIGINAL ACTION in the Supreme Court. *Certiorari.*

The facts are stated in the opinion of the court.

Jose Teodoro for petitioners.
Sotto & Sotto for respondents.

FERIA, *J.:*

Although the petition in this case is for a writ of certiorari on the ground that the respondent Judge exceeded his jurisdiction in denying the motion filed by the petitioner with the Court of First Instance of Manila presided over by said judge, praying that a writ of execution of the judgment rendered by the Municipal Court be issued pursuant to section 8, Rule 72, of the Rules of Court, because the respondent Luis Borromeo failed to deposit the rent for May, 1945—this is really a petition for mandamus to

compel the respondent Judge to issue said writ of execution under section 3, Rule 67, for if the petitioners' contention were well taken, the respondent Judge, in denying petitioners' motion for a writ of execution, failed to perform a duty specifically enjoined by law.

Petitioners obtained on April 25, 1945, a judgment from the Municipal Court which sentenced the defendant (now respondent) Luis Borromeo to vacate the premises leased to him by the petitioners and to pay a monthly rental of ₱40 from March 1, 1945. Defendant appealed to the Court of First Instance, and the latter on August 21, 1945, rendered judgment sentencing defendant to restore the possession of the premises to petitioners and to pay them the rents thereof at the rate of ₱40 a month from March 1, 1945, until defendant vacated the permises. Defendant appealed from said judgment of the Court of First Instance to this Court, the appeal having been perfected on October 24, 1945, when the record on appeal was approved by said court. On October 30, 1945, said record was transmitted to this Court.

In view of the foregoing, it is evident that the Court of First Instance had no power or jurisdiction to grant the motion filed by petitioners on November 12, 1945, and order the execution of the judgment of the Municipal Court, and therefore mandamus does not lie to compel the respondent Judge to do so, for the following reasons:

First, because inasmuch as the judgment of the Municipal Court had been superseded by the judgment of the Court of First Instance rendered on August 21, 1945, the latter could not order the execution of said judgment of the Municipal Court which had become *functus oficio*. Section 8, Rule 72, of the Rules of Court provides that "should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the Court of First Instance, upon motion of plaintiff, of which the defendant shall have notice, and upon proof of such failure, shall order the execution of the *judgment appealed from* * * *. If the case is tried on its merits by the Court of First Instance, any money paid into court by the defendant for the purpose of staying of execution shall be disposed of in accordance with the *provision of the judgment of the Court of First Instance* * * *." (Italics ours.) According to section 9 of the same Rule 72, the judgment of the Court of First Instance may be executed during the pendency of the appeal to this Court, if the defendant and appellant fails to pay "either to the plaintiff or into the appellate court the same amounts referred to in the preceding section to be disposed of in the same manner as therein provided."

And secondly, because when the motion for a writ of execution was filed by petitioners on November 12, 1945, the Court of First Instance had already lost jurisdiction over the case, in accordance with section 9, Rule 41, of the Rules of Court, which is applicable to ordinary as well as to special civil actions. For the respondent had appealed from the judgment of the Court of First Instance to this Court, and the record on appeal filed by the defendant and appellant was approved on October 24, 1945. And as the Court of First Instance had already lost jurisdiction over the case when the motion for execution was filed, the respondent Judge had no power and, consequently, can not be compelled by mandamus to order the execution of the judgment not only of the justice of the peace, assuming that it was still in force, but of the very Court of First Instance presided over by him.

Petition is therefore denied with costs against petitioners.

Ozaeta, Parás, Jaranilla, De Joya, Pablo, Perfecto, Hilado, Bengzon, and *Briones, JJ.*, concur.

Petition dismissed.

[No. L-121. March 14, 1946]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* RUFO DIZON and TOMAS DIZON, defendants. RUFO DIZON, appellant.

1. CRIMINAL PROCEDURE; EVIDENCE; TESTIMONY OF CO-ACCUSED AS BASIS FOR CONVICTION.—A co-accused or a co-defendant, who has been found guilty or innocent in the same case, is always a competent witness for, or against, any of his co-accused (United States *vs.* Grant, 18 Phil., 122, 170). And it has even been held that the uncorroborated testimony of a co-accused, when satisfactory and convincing, may be the basis for a judgment of conviction (United States *vs.* Shoup, 35 Phil., 56; United States *vs.* Remigio, 37 Phil., 610); although the better rule is that to serve as a legal basis for conviction, the testimony of an accomplice must always be corroborated by some other witness or evidence (People *vs.* Asinas, 53 Phil., 59; People *vs.* Bantagan, 54 Phil., 834).
2. ID.; ID.; VOLUNTARY ADMISSIONS OF ACCUSED.—The admissions voluntarily made by herein defendant and appellant before the chief of police of Labrador, in the presence of the municipal mayor, and which were ratified by him in writing before the justice of the peace of said municipality, are competent evidence against him.
3. ID.; ID.; LACK OF IMPROPER MOTIVE ON PART OF WITNESSES FOR PROSECUTION.—Defendant and appellant has not presented any evidence showing that the witnesses for the prosecution have testified falsely against him; and the absence of all evidence as to an improper motive actuating the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive has existed, and that their testimony is worthy of full faith and credit.

4. ID.; ID.; "ALIBI"; DEGREE OF PROOF NECESSARY.—The defense of *alibi* set up by the defendant and appellant, alleging that he was at home at the time of the commission of the crime imputed to him, cannot merit serious consideration on the part of the court, not only because it lacks satisfactory corroboration; but principally because it has been destroyed by the overwhelming evidence for the prosecution. The defense of *alibi*, to be successful, must be proved by positive, clear and satisfactory evidence, which reasonably satisfies the court of the truth of such defense.

APPEAL from a judgment of the Court of First Instance of Pangasinan. Natividad, J.

The facts are stated in the opinion of the court.

Iluminado Rupisan-Mabalot for appellant.

Assistant Solicitor-General Amparo and *Solicitor Abad Santos* for appellee.

DE JOYA, *J.*:

The two defendants in this case were accused of the crime of qualified theft of large cattle, in the Court of First Instance of Pangasinan, under the following information:

"The undersigned, after having been duly sworn to, accuses Rufo Dizon and Tomas Dizon of the crime of theft of large cattle, committed as follows:

"That on or about the 2nd day of August, 1945, in the barrio of Tobuan, municipality of Labrador, Pangasinan, and within the jurisdiction of this court, the defendants above named conspiring and cooperating together and with intent of gain, did then and there wilfully, unlawfully and feloniously steal, get and take away three (3) carabaos belonging to the owners, Genoveva Marayag and Doroteo Dacono without the consent of said owners, valued at nine hundred pesos (₱900), Philippine currency. All contrary to law."

When the case was called for arraignment, defendant Tomas Dizon pleaded guilty to the charge, and was sentenced accordingly; and the case was tried with reference to defendant Rufo Dizon, who was also found guilty and sentenced to an indeterminate penalty, ranging from two (2) years, eleven (11) months and eleven (11) days of *prisión correccional*, as minimum to six (6) years, eight (8) months and twenty-one (21) days of *prisión mayor*, as maximum, with the accessory penalties prescribed by law, to indemnify, jointly and severally, with his co-accused, Tomas Dizon, the complainants Genoveva Marayag and Doroteo Dacono in the sum of nine hundred pesos (₱900), and to pay one-half (½) of the costs. Said defendant Rufo Dizon has now appealed to this Court, assigning several errors, the substance of which is that the trial court erred in finding him guilty, notwithstanding that the evidence adduced by the prosecution was utterly insufficient to establish his guilt of the crime charged, beyond reasonable doubt.

At the trial of the case, in addition to the two complainants Genoveva Marayag and Doroteo Dacono, were also called to testify for the prosecution, Serapio Aquino, chief of police of the municipality of Labrador, Pangasinan, Manuel L. Fernandez, justice of the peace of the municipality of Labrador, Pangasinan, Domingo Victorio, an acquaintance of the two complainants and of the defendant and appellant, and Tomas Dizon, who had entered a plea of guilty in this case in the court below.

The evidence adduced during the trial has fully established the following facts:

That on August 2, 1945, the two complainants Genoveva Marayag and Doroteo Dacono owned carabaos, which were pasturing in the barrios of Tobuan and Apoler, municipality of Labrador, Province of Pangasinan; that in the forenoon of that day, said complainants noticed the disappearance of the three (3) carabaos mentioned in the information, of the approximate value of ₱300 each, two (2) of them belonging to complainant Genoveva Marayag and the other to complainant Doroteo Dacono; that on that same day, August 2, 1945, Domingo Victorio, an acquaintance of the complainants and of the defendant and appellant in this case, met the latter with a companion, who happened to be defendant Tomas Dizon, on the provincial road between the municipalities of Sual and Alaminos, Province of Pangasinan, said appellant and his companion then bound for the municipality of Mabini, Pangasinan; that when said witness met defendant and appellant and defendant Tomas Dizon, the latter was riding on a carabao, driving two others, while the defendant and appellant Rufo Dizon was riding on a horse; that said witness noticed that said Tomas Dizon with the three (3) carabaos seemed to be in a great hurry, while herein defendant and appellant stopped and alighted from his horse, and on being asked by said witness why he had alighted from the horse, appellant Rufo Dizon answered that it was because his horse was frightened; and that the said witness, Domingo Victorio, fully recognized herein defendant and appellant as well as the three carabaos led by his companion as belonging to the two complainants, by their color, stature, general appearance and the shape of their horns; that when the two defendants reached the municipality of Mabini, Pangasinan, they sold the carabao belonging to Doroteo Dacono to an unidentified party, and slaughtered one of the two carabaos belonging to Genoveva Marayag, and sold the meat for thirty-eight pesos (₱38) which was equally divided between the two; while the third carabao belonging to Genoveva Marayag was left by them, for safekeeping, with one Mariano Castro, a brother-in-law of defendant To-

mas Dizon, from whom it was recovered by the authorities. That when said witness Domingo Victorio returned home, which was about one (1) kilometer from Tobuan, Labrador, and learned that the complainants were looking for their carabaos, he happened to inform one Guillermo Sison and others having seen said carabaos being led away by herein defendant and appellant Rufo Dizon and his companion, on the provincial road leading from Sual to Alaminos; that during the search made by the complainants for said carabaos, they learned of the information imparted by said Domingo Victorio, and reported the matter to chief of police Serapio Aquino of the municipality of Labrador, who conducted an investigation to verify said information; and being satisfied with its correctness, said chief of police placed the two defendants under custody for questioning, and in the course of the investigation, defendant and appellant Rufo Dizon admitted verbally and in writing, in the presence of the Mayor of Labrador, having taken said three carabaos, while pasturing, assisted by his co-defendant Tomas Dizon, who happened to be his cousin. The written admission was afterwards signed by defendant and appellant Rufo Dizon in the presence of the justice of the peace, who also testified in this case. Thereafter, the corresponding complaint was filed in the justice of the peace court of the municipality of Labrador, Pangasinan, and when arraigned, defendant and appellant Rufo Dizon admitted his guilt.

The case was forwarded to the Court of First Instance of Pangasinan, where the information quoted above was filed, and when the case was called for trial, defendant Tomas Dizon entered a plea of guilty, and, as already stated, he was sentenced accordingly; and the trial proceeded with reference to defendant Rufo Dizon, who was also found guilty, and who has appealed to this Court.

That the three (3) carabaos in question of the approximate value of ₱300 each had been taken away, without the knowledge and consent of the complainants, while pasturing, is an established fact; and with reference to the identity of defendant and appellant Rufo Dizon and his companion, who were seen with the three (3) carabaos by said witness Domingo Victorio on the provincial road between Sual and Alaminos, the testimony of said witness, who had absolutely no motive to testify falsely in this case, is conclusively; and it is fully corroborated by the plea of guilty of said Tomas Dizon and the admissions made by herein defendant and appellant verbally and in writing; and being a resident in a neighboring barrio of Labrador, Pangasinan, and acquaintance of the complainants and of herein defendant and appellant, and also an experienced

farmer familiar with said complainants' carabaos, Domingo Victorio's testimony as to the identity of the three (3) carabaos in question as being the property of herein complainants is unquestionable. Furthermore, his testimony with reference to the three (3) carabaos has been fully and completely corroborated by the testimony in court of the co-accused Tomas Dizon, who had pleaded guilty, by the two complainants and by the recovery of the carabao, which had been left by the accused, for safekeeping, with Mariano Castro, a brother-in-law of defendant Tomas Dizon. The two complainants also testified that the three (3) carabaos in question were reasonably worth three hundred pesos (₱300) each.

The record of this case discloses that defendant and appellant Rufo Dizon is a poor peasant; but poverty is not incompatible with honor. No one can deny the dignity of labor and that honor lies in honest toil. The greatest man in History was the poorest. Not he who has little, but he who wishes more, is really poor. Neither is poverty incompatible with honesty. And an honest man is said to be the noblest work of God.

By the industry and perseverance of man, even the desert shall rejoice and blossom as the rose. In this land of equal opportunities for all and special privileges for none, where fertile lands abound, and where any industrious and enterprising young man may acquire public lands for the mere asking, there is no justification for robbery and thieving. The poorest and the humblest man can earn an honest livelihood by tilling the soil and becoming a farmer, a noble calling. The first farmer was the first man, and all historic nobility rests on the possession and use and cultivation of land.

Robbery in all its forms is the greatest scourge in all agricultural communities. It retards and discourages prosperity and progress; as it seems to illustrate the truth of the common saying that, although prosperity makes friends, it also makes so many enemies. The foundation of every state is said to be the education of its youth; and said evil, which is now more rampant than ever, may still be remedied. Through education, it becomes easy to lead people but difficult to drive; easy to govern but impossible to enslave. And what greater gift can our mentors offer the Republic than to teach and instruct, with greater emphasis, the youth of the land in the ancient virtues of industry, perseverance and the dignity of labor, coupled with proper respect for the rights and property of others!

Defendant and appellant Rufo Dizon in this case complains that he was convicted by the lower court, mainly on the strength of the testimony of his cousin and co-accused

Tomas Dizon. In this jurisdiction, a co-accused or a co-defendant, who has been found guilty or innocent in the same case, is always a competent witness for, or against, any of his co-accused (United States *vs.* Grant, 18 Phil., 122, 170). And it has even been held that the uncorroborated testimony of a co-accused, when satisfactory and convincing, may be the basis for a judgment of conviction (United States *vs.* Shoup, 35 Phil., 56; United States *vs.* Remigio, 37 Phil., 610); although the better rule is that to serve as a legal basis for conviction, the testimony of an accomplice must always be corroborated by some other witness or evidence (People *vs.* Asinas, 53 Phil., 59; People *vs.* Bantagan, 54 Phil., 834). And the testimony of defendant Tomas Dizon, a cousin of herein defendant and appellant, as a witness for the prosecution, as to the taking of the carabaos in question from the municipality of Labrador to the municipality of Mabini, where defendants disposed of them, has been fully corroborated by said witness Domingo Victorio and by the chief of police and the justice of the peace, who testified as to the admissions made by herein defendant and appellant as to their taking and disposition of the carabaos in question, and his plea of guilty.

The testimony of said Tomas Dizon is worthy of consideration in this case, although he has been found guilty of an ugly offense, after his spontaneous plea of guilty. He who repents for his crime is almost innocent, as candor is a compound of justice and the love of truth.

The admissions voluntarily made by herein defendant and appellant Rufo Dizon, before the chief of police of Labrador, in the presence of the municipal mayor, and which were ratified by him in writing before the justice of the peace of said municipality, are competent evidence against him (United States *vs.* Lio Team, 23 Phil., 64; United States *vs.* Corrales, 28 Phil., 362).

Defendant and appellant Rufo Dizon has not presented any evidence showing that the witnesses for the prosecution have testified falsely against him; and the absence of all evidence as to an improper motive actuating the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive has existed, and that their testimony is worthy of full faith and credit (United States *vs.* Pajarillo, 19 Phil., 288; People *vs.* De Otero, 51 Phil., 202).

The defense of *alibi* set up by the defendant and appellant, alleging that he was at home at the time of the commission of the crime imputed to him, cannot merit serious consideration on the part of the court, not only because it lacks satisfactory corroboration; but principally because it has been destroyed by the overwhelming evidence for

the prosecution. The defense of *alibi*, to be successful, must be proved by positive, clear and satisfactory evidence, which reasonably satisfies the court of the truth of such defense (United States *vs.* Olais, 36 Phil., 828; People *vs.* Pili, 51 Phil., 965).

The guilt of the defendant of the crime of qualified theft of the three (3) carabaos, reasonably worth three hundred pesos (₱300) each, mentioned in the information filed in this case, has been established beyond reasonable doubt; and the penalty imposed by the trial court being in accordance with law, the judgment appealed from is hereby affirmed, with the sole modification that the indemnity to be paid to the offended parties, is reduced from nine hundred pesos (₱900) to six hundred pesos (₱600), as the carabao left by the defendants, for safekeeping with Mariano Castro, has been recovered and restored to complainant Genoveva Marayag; and in accordance with the provisions of section 1 of the Indeterminate Sentence Law, and those contained in article 310 of the Revised Penal Code, in connection with the provisions of article 309(3) thereof, defendant and appellant Rufo Dizon is, therefore, hereby sentenced to an indeterminate penalty, ranging from two (2) years, eleven (11) months and eleven (11) days of *prisión correccional*, as minimum, to six (6) years, eight (8) months and twenty-one (21) days of *prisión mayor*, as maximum, with the accessory penalties prescribed by law, to indemnify, jointly and severally, with his co-accused, Tomas Dizon, the complainants Genoveva Marayag and Doroteo Dacono in the sum of six hundred pesos (₱600), and to pay the costs. So ordered.

Ozaeta, Perfecto, Hilado, and *Bengzon, JJ.*, concur.

Judgment modified.

[No. L-247. March 14, 1946]

MONSIG. CAMILO DIEL, petitioner, *vs.* FELIX MARTINEZ, Judge, Court of First Instance of Cebu, CESAR KINTANAR, Assistant City Fiscal of Cebu, and VICENTE SOTTO, respondents.

1. PRIVATE PROSECUTOR.—Under the facts in this case, the lower court did not commit any abuse of discretion or any legal error in allowing a private prosecutor to appear in the criminal case in question.
2. SILENCE IN THE INFORMATION.—The omission in the information in a criminal case of the name of an offended party is not incompatible with the fact that there is one, it appearing that the offense alleged in the information belongs to the class of harmful ones.

ORIGINAL ACTION in the Supreme Court. *Prohibition.*

The facts are stated in the opinion of the court.

Honorato S. Hermosisima, Tomas Alonso, Bernardo K. Sanchez, Cecilio de la Victoria and *Florentino Urot* for petitioner.

Sotto & Sotto for respondents.

PERFECTO, *J.:*

On October 24, 1945, information for illegal practice of medicine was filed against petitioner. On January 14, 1946, the respondent attorney was permitted, over petitioner's objection, to appear in the case as private prosecutor. After the order was entered, although retaining full control of the prosecution and assuming full responsibility therefor, the fiscal announced that he was turning over to said attorney the active conduct of the trial.

Petitioner complains that said order was issued with a grave abuse of discretion, there being no offended party named in the information, no damages sued to be recovered in the criminal action, and Atty. Vicente Sotto having previously announced his expressed reservation to file at a later date the corresponding civil action against petitioner.

Respondents answered that all the witnesses who testified before the fiscal are offended parties, they having been victims of petitioner; that, although it is true that said attorney manifested in open court that he had no objection to reserving the right to institute a civil action, it is not less true that later he withdrew said statement so as to bring the case under the provision of Rule 106, section 15; that the victims of petitioner wanted to recover in the criminal case the fees they paid to him; that petitioner has another remedy by appeal; and that there is no abuse of discretion in the issuance of the order in question.

At the hearing of this case, no one appeared to argue in behalf of petitioner. Attorney Juris Sotto appeared for the respondents and, on her petition, she was allowed to file a memorandum instead of arguing orally.

As alleged by petitioner, no offended party is named in the information, but such omission is not incompatible with the fact that, as alleged by respondents, all the witnesses who appeared before the fiscal as alleged victims of petitioner should be considered as offended parties, it appearing that the offense alleged in the information belongs to the class of harmful ones. If there are offended parties, petitioner's contention that no damages are to be recovered in the criminal action must be untenable.

The fact that respondent attorney manifested in open court that he had no objection to reserving the right to institute a civil action, should not be considered for the

purpose of applying section 15 of Rule 106, it appearing that the statement has been withdrawn being the result of *lapsus linguae*.

Under the facts in this case, we are of opinion that the respondent judge did not commit any abuse of discretion or any legal error in permitting the intervention of respondent attorney as private prosecutor in the criminal case in question.

In fact, we do not see anything objectionable in said intervention if we take into consideration that in its order dated January 14, 1946, the lower court specifically guaranteed: "The court will see to it that the prosecution of this case be pushed through within the bounds of law, will not tolerate persecution nor delay. The case will be handled under the full responsibility of the fiscal. In ordinary parlance, Attorney Sotto will be a guest of Fiscal Kintanar, host, who may permit Attorney Sotto to assist him. From the record of this case it can be gleaned that this court has not given consideration to any petition made by private prosecutor without the consent of the fiscal."

Section 15 of Rule 106, as interpreted by petitioner, is premised on the theory that the prosecution of offenses is a public function. But said public function can be performed not exclusively by fiscals or other public officers, but by private attorneys in cases where they are allowed to intervene as private prosecutors. After all, in the performance of their professional duties, lawyers are officers of the court and assume public and official responsibilities.

Petition is dismissed with costs to be taxed against petitioner. So ordered.

Moran, C. J., Ozaeta, Parás, Jaranilla, Feria, De Joya, Hilado, Pablo, Bengzon, and *Briones, J.,* concur.

Petition dismissed.

[No. L-154. March 18, 1946]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* JESUS NUEVAS, defendant and appellant

CRIMINAL LAW; WHITE SLAVE TRADE; ACTS PUNISHED BY ARTICLE 341 OF REVISED PENAL CODE; CASE AT BAR.—Aticle 341 penalizes three acts: (*a*) engaging in the business of prostitution, (*b*) profiting by prostitution, or (*c*) enlisting the services of women for the purpose of prostitution. Any person committing any one of these acts comes within the purview of said article. The proofs show beyond reasonable doubt that the appellant (*a*) enlisted the services of women for the purpose of prostitution and (*b*) profited thereby. Even if the appellant were not the lessee of any particular house, he could not escape the penalty imposed by the law for the immoral and illicit trade in which he engaged. As a matter of law, once it was proved that the accused had enlisted the services of women for the purpose of prostitution, he was criminally liable

even if there were no proof that he had shared in the profit. And even if there were no proof that he had enlisted the services of women for the purpose of prostitution, he would still be criminally liable because there is indubitable proof in this case that he shared in the income of the prostitutes.

APPEAL from a judgment of the Court of First Instance of Batangas. Macadaeg, J.

The facts are stated in the opinion of the court.

Camus, Zavalla, Bautista & Nuevas for appellant.

First Assistant Solicitor-General Reyes and *Solicitor Umali* for appellee.

OZAETA, *J.:*

The defendant Jesus Nuevas was accused in and convicted by the Court of First Instance of Batangas of a violation of article 341 of the Revised Penal Code, which reads as follows:

"ART. 341. *White slave trade.*—The penalty of *prisión correccional* in its medium and maximum periods shall be imposed upon any person who, in any manner, or under any pretext, shall engage in the business or shall profit by prostitution or shall enlist the services of women for the purpose of prostitution."

It was proved during the trial of this case that about three or four months previous to September 22, 1945, the accused and appellant contracted the services of four women of ill repute whom he brought to and maintained in a certain house in the barrio of Alangilang, Batangas, Batangas, to engage in prostitution. He furnished them food and lodging and in return received one-half of their earnings from their illicit traffic with colored soldiers. On the afternoon of September 22, 1945, the bawdy-house maintained by the defendant was raided by the police and the four women, together with the defendant, who was in that house, were brought to the police station for investigation, as a result of which the present case was filed against the accused. Two of the said women, Emilia de la Cruz and Juanita Fernandez, as well as the sergeant of the military police (Angelo Murano) who made the arrest, testified to the facts herein stated.

The defendant was the only witness who testified in his own defense. He claimed that he was a resident of Manila but that on September 22, 1945, he went to the house in question "to collect a debt from people who owes me money"; that the owner of the house was an old widow; that the lesee, whose name is Moises Santos and who at the time of the trial was probably in Manila, according to him, was the one who owed him ₱150.

The trial court did not believe the uncorroborated testimony of the accused but believed that of Sergeant Murano and the two women, Emilia de la Cruz and Juanita

Fernandez. Sergeant Murano testified that his duties were to pick up girls of ill fame, vagrants, and prostitutes; that at about 2 o'clock p. m. on September 22, 1945, after receiving a tip that the house in question was a brothel, he and his companions raided it and found there thirteen colored soldiers, three of whom were in three different rooms, each with a girl; that in that same house he found the accused, who then and there, upon being questioned, declared that he was not the owner of the house but that the owner had left him in charge; that the women also then and there told him that they had been splitting their earnings with the accused; that the colored soldiers also told him that they paid the girls ₱10 for each intercourse.

Emilia de la Cruz, twenty-one years of age, single, testified and pointed to the accused Jesus Nuevas as "our manager," with whom she split fifty-fifty her earnings as a prostitute. She affirmed that her charge was ₱10 a coition.

Juanita Fernandez, also twenty-one years of age, single, testified that she knew the accused Jesus Nuevas "because he is our manager"; that it was the accused who, four months before, contracted her to serve as a prostitute in a house located in the barrio of Alangilang which she said was rented by the accused from the owner, whom she did not know; that it was the accused who was paying for her meals in that house; that she received from her customers ₱10 for each coition and paid one-half of it to the accused.

The only assignment of error made by the appellant is that the trial court erred in convicting him on the evidence adduced by the prosecution. He argues that under article 341 of the Revised Penal Code the prosecution (*a*) must identify the alleged house of ill fame, (*b*) must prove it to be really a house of ill fame, and (*c*) must further prove that the accused is either the owner or the lessee of the house. We find such contention untenable. Article 341 penalizes three acts: (*a*) engaging in the business of prostitution, (*b*) profiting by prostitution, or (*c*) enlisting the services of women for the purpose of prostitution. Any person committing any one of these acts comes within the purview of said article. The proofs show beyond reasonable doubt that the appellant (*a*) enlisted the services of women for the purpose of prostitution and (*b*) profited thereby. Even if the appellant were not the lessee of any particular house, he could not escape the penalty imposed by the law for the immoral and illicit trade in which he engaged. As a matter of law, once it was proved that the accused had enlisted the services of women for the purpose of prostitution, he was criminally liable even if there were no proof that he had shared in the profit.

And even if there were no proof that he had enlisted the services of women for the purpose of prostitution, he would still be criminally liable because there is indubitable proof in this case that he shared in the income of the prostitutes.

Finding the appellant guilty of the offense charged beyond reasonable doubt, we affirm the sentence appealed from with the sole modification that the maximum of the penalty imposed shall be three (3) years, six (6) months, and twenty-one (21) days of *prisión correccional*, with costs against the appellant.

De Joya, Perfecto, Hilado, and *Bengzon, JJ.*, concur.

Judgment modified.

[CA–No. 299. March 18, 1946]

FELIX ADAN, plaintiff and appellant, *vs.* AGAPITO CASILI and VICTORIA ADAN, defendants and appellees

DESCENT AND DISTRIBUTION; COLLATION; ALLOWANCES FOR EDUCATION; EXPENSES FOR PROFESSIONAL OR ARTISTIC CAREER; CASE AT BAR.—Under article 1041 of the Civil Code, allowances for support, education, attendance in illnesses, even though unusually expensive, apprenticeship, ordinary equipment, or customary presents are not subject to collation. But article 1042 of the same Code provides that expenses which may have been incurred by the parents in giving their children a professional or artistic career shall not be brought to collation unless the parent so orders or they encroach upon the legitime. It also provides that in cases in which it is proper to collate them, the money which the child would have spent if it had lived in the house and company of its parents shall be deducted therefrom. Since the career of surveyor is a professional one, and since the expenses incurred by plaintiff's mother in giving him that career encroached upon the legitime, it is proper to collate one-half of the amount spent by her for him during the two years he studied surveying, the other half being considered as the amount which the plaintiff would have spent if he had lived in the house and company of his mother.

APPEAL from a judgment of the Court of First Instance of Camarines Sur. Prieto, J.

The facts are stated in the opinion of the court.

Cesareo A. Fabricante for appellant.
Francisco Celebrado for appellees.

OZAETA, *J.*:

The plaintiff Felix Adan commenced this action in the Court of First Instance of Camarines Sur against his sister Victoria Adan and the latter's husband, Agapito Casili, to secure the judicial partition of the estate left by their deceased mother, Simplicia Nepomuceno, alleged to consist of six parcels of land which are specifically described in the complaint. Parcels 1 and 3, however, were subsequently discarded, the first having been sold by the parties to the municipality of Libmanan, Camarines Sur, and the

second being admittedly the property of Maria Adan, a half sister of the parties litigant. The remaining four parcels, referred to in the record as lots Nos. 2, 4, 5, and 6, are valued by both parties at ₱2,783.55.

The defendants interposed the following defense: That the four lots in question were ceded by the deceased Simplicia Nepomuceno to her daughter Victoria Adan as her share of the inheritance; and that the plaintiff, has received more than his share consisting of money, livestock, palay, and real property, namely:

Expenses of the plaintiff as a student from 1918 to 1925	₱8,000.00
Twelve carabaos received by the plaintiff from his mother, at ₱30 each	360.00
Three hundred cavans of palay, at ₱4.20 a cavan	1,260.00
Cash taken by the plaintiff from his mother in 1927	1,110.00
Two parcels of land bought by the plaintiff with money he received from his mother	1,220.00

The trial court found that the alleged donation by the deceased Simplicia Nepomuceno of the four parcels of land in question had not been duly proven, there being no written document to support it, and that therefore the said four parcels of land should be brought into collation. It also found that the alleged receipt by the plaintiff from his mother of ₱1,110 in cash and of ₱1,220 with which the plaintiff purchased the two parcels of land mentioned in defendants' answer, had not been satisfactorily proven.

It found, however, that the plaintiff received from his mother during her lifetime various sums aggregating ₱3,000 for his expenses while studying surveying in Manila, one-half of which, or ₱1,500, should be brought into collation; that he also received or took from his mother twelve carabaos worth ₱30 a head, or ₱360, and 300 cavans of palay at ₱4.20 a cavan, or ₱1,260, all of which amounted to ₱3,120—more than the value of the four parcels of land now in the possession of the defendants. Hence it absolved the defendants from the complaint without any finding as to costs.

The plaintiff appealed from the judgment of the trial court and makes the following assignment of errors:

"1. The lower court erred in finding that it has been sufficiently and satisfactorily proven (*a*) that the plaintiff and appellant took from the deceased Simplicia Nepomuceno three hundred (300) cavans of palay worth ₱4.20 a cavan; (*b*) that plaintiff and appellant appropriated to himself twelve carabaos belonging to said deceased the price of which is ₱30 per head and (*c*) that plaintiff and appellant received the amount of three thousand pesos (₱3,000) to support his studies in Manila as surveyor from 1918 to 1926.

"2. The lower court erred in not giving any credit to the testimony of the witness for the plaintiff and appellant concerning the fruits or produce of one of the parcels, described as lot No. 4, of the estate in question.

"3. The lower court erred in not declaring that the parcel described as lot No. 4 produced eight hundred (800) cavans of palay yearly.

"4. The lower court erred in not including in its computation of the distributable inheritance the fruits or produce of lot No. 4 of the estate in question from the death of the deceased Simplicia Nepomuceno until the date of this suit.

"5. The lower court erred in its determination of the hereditary estate divisible between the plaintiff and appellant and the defendants and appellees herein."

We find from the record that the plaintiff and appellant did not prove his contentions. He was supposed to know the facts of his case better than anybody else, and yet he did not testify in his own behalf. The only witness who testified in chief for the plaintiff was his own lawyer, Cesareo Fabricante, who limited himself to presenting copies of the tax declarations covering the parcels of land in question and to testifying as to the annual produce of lot No. 4, which he claimed was 800 cavans of palay a year.

On the other hand, the defendant spouses both testified in their own behalf, and in addition to their testimony they called another witness named Sisenando Inocencio to corroborate their declaration regarding the appropriation by the plaintiff of twelve carabaos belonging to his deceased mother and of which the said witness was the caretaker.

We find no competent evidence in the record to disprove or impeach the testimony of the defendants to the effect that the plaintiff took and received from his mother during the latter's lifetime ₱1,110 in cash and 300 cavans of palay in the manner and under the circumstances narrated by the defendant spouses as witnesses in their own behalf. The 300 cavans of palay was taken by the plaintiff from the granary of his mother in 1927. The cash consisting of twenty-peso and five-peso bills and amounting in all to ₱1,110 was taken by the plaintiff from his mother's trunk on an occasion when she suffered a collapse and when the plaintiff took some money from the same trunk with which to pay for injections. As we have said, the plaintiff did not testify to deny the testimony of the defendants. It is admitted in the brief for the plaintiff and appellant that the latter took 300 cavans of palay from his mother's granary, but it is claimed that said palay belonged to him. In the absence of plaintiff's testimony to support such claim, there is no basis upon which to sustain it. It was also proved during the trial that the plaintiff took possession of twelve carabaos belonging to his mother and that the value of said animals was ₱30 a head.

It was also established during the trial that the plaintiff studied surveying in Manila and that during his studies

his mother and sister sent him money for his support and expenses, amounting to approximately ₱500 a year. Although the defendants claim that his studies lasted from 1918 to 1925, we sustain the contention of the plaintiff and appellant in his brief that it took him only two years to finish the course of surveying, because it is a matter of common knowledge that surveying is a two-year course, and it is probable that the rest of the time was spent by him in acquiring a high-school education.

Under article 1041 of the Civil Code, allowances for support, education, attendance in illnesses, even though unusually expensive, apprenticeship, ordinary equipment, or customary presents are not subject to collation. But article 1042 of the same Code provides that expenses which may have been incurred by the parents in giving their children a professional or artistic career shall not be brought to collation unless the parent so orders or they encroach upon the legitime. It also provides that in cases in which it is proper to collate them, the money which the child would have spent if it had lived in the house and company of its parents shall be deducted therefrom. Since the career of surveyor is a professional one, and since the expenses incurred by plaintiff's mother in giving him that career encroached upon the legitime, it is proper to collate one-half of the amount spent by her for him during the two years he studied surveying, the other half being considered as the amount which the plaintiff would have spent if he had lived in the house and company of his mother.

The claim of the plaintiff that parcel No. 4 described in the complaint produced 800 cavans of palay a year which he contends should form part of the estate, has not been established by competent evidence. The plaintiff claims that at the rate of 800 cavans a year parcel No. 4 produced from 1938 at 1943 a total of 3,200 cavans, which at ₱2.50 a cavan amounted to ₱8,000. Such claim seems to us highly exaggerated, considering that the value of said lot No. 4, as alleged by the plaintiff himself, was only ₱693.55. It seems to us unbelievable that a piece of land worth less than ₱700 could produce a net income of ₱8,000 in five years.

The unfair exaggeration in which plaintiff and appellant indulges may be further noted from the fact that while he in his brief appraises the 300 cavans of palay taken by him at ₱1.50 a cavan, he values the 3,200 cavans of palay which he claims was produced by lot No. 4 at ₱2.50 a cavan.

On the other hand, we find that the price of ₱4.20 a cavan claimed by the defendants for the 300 cavans of palay was also exaggerated. We accept the testimony of

Pedro Fabricante, a rebuttal witness for the plaintiff, to the effect that in 1928 the price of palay in Libmanan oscillated from ₱1.20 to ₱2.20 a cavan, depending upon the season of the year in which the grain was sold. Since the plaintiff himself claimed that the price of palay in Libmanan was ₱2.50 a cavan, we accept the maximum price given by the witness Fabricante, to wit, ₱2.20, as the most reasonable.

Summarizing the evidence, we find that the plaintiff has received from the estate of his mother the following:

Cash	₱1,110.00
Twelve carabaos, at ₱30 a head	360.00
Three hundred cavans of palay, at ₱2.20 a cavan	660.00
Amount spent by the plaintiff's mother to give him a professional career, to wit, ₱1,000, of which one half is collationable	500.00
Total	₱2,630.00

The defendant Victoria Adan, on the other hand, received from her deceased mother the four parcels of land in question, the agreed value of which is ₱2,783.55. It was proven during the trial that she spent ₱300 for the funeral of the deceased, and deducting that sum from the value of the property she received would leave only ₱2,483.55 as her net share, which is less than that received by the plaintiff.

Whatever produce the defendants may have obtained from the four parcels of land received by them must have been compensated more or less by the fruit or interest of the money and other property received by the plaintiff.

It will be noted that, by a different process of reasoning, based upon our own independent study of the evidence, we arrive at the same result as that reached by the trial court, namely, that the plaintiff is not entitled to the relief he seeks.

The judgment is affirmed, with costs.

De Joya, Hilado, and *Bengzon, JJ.*, concur.

Judgment affirmed.

[CA–No. 9848. March 18, 1946]

VICTORIANO VALDEZ ET AL., plaintiffs and appellees, *vs.* ANGEL B. PINE, defendant and appellant. CELERINA MAIMBAN, intervenor and appellee.

1. LAND REGISTRATION; COURTS; LACK OF JURISDICTION TO DECREE REGISTRATION IN CADASTRAL CASE OF LAND ALREADY COVERED BY TORRENS CERTIFICATE ISSUED IN EARLIER REGISTRATION CASE; JURISDICTION LIMITED TO CORRECTION OF ERRORS IN TECHNICAL DESCRIPTION.—The land being already covered by a Torrens certificate of title issued in an earlier registration case, the court had no jurisdiction to again decree the registration

thereof in the cadastral case—Reyes *vs.* Borbon (50 Phil., 791)—the jurisdiction of the court in the cadastral case being limited to the necessary correction of technical errors in the description of the land, provided such corrections do not impair the substantial rights of the registered owner, and such jurisdiction cannot operate to deprive the registered owner of his title—Pamintuan *vs.* San Agustin (45 Phil., 558).

2. APPEAL; FINDINGS OF FACT OF TRIAL COURT, WHEN TO BE DISTURBED.—It is a well-settled doctrine in this jurisdiction, repeatedly upheld by this court, that the findings of fact made in the judgment of the trial court should not be disturbed here, unless the trial court failed to take into consideration some material fact or circumstance or to weigh accurately all material facts and circumstances presented to it for consideration.

APPEAL from a judgment of the Court of First Instance of Pangasinan. Bejasa, J.

The facts are stated in the opinion of the court.

Vicente J. Francisco for appellant.
Primicias, Abad, Mencias & Castillo for appellees.
Rupisan & Ramirez for intervenor.

HILADO, *J.:*

This is an appeal to reverse the decision rendered by the Court of First Instance of Pangasinan under date of July 30, 1941, in favor of plaintiffs and appellees, with respect to the major part of the land in dispute, and of intervenor and appellee with respect to the remainder consisting of a portion of two hectares.

In its well-considered decision, the trial court found from the stipulation of facts presented by the parties and the evidence adduced by them the following facts:

The parcel of land described in paragraph 4 of the reamended complaint formerly belonged to one Francisca Valdez, who died in the municipality of Rosales, Province of Pangasinan, on June 21, 1924, without descendants nor ascendants. Some time after the death of said Francisca Valdez, her brothers and sister instituted a special proceeding over her intestacy which was docketed as civil case No. 1209 of the lower court, in which the same court declared heirs of said deceased her sister Estefania Valdez and her brothers Francisco Valdez and Esteban Valdez and her niece and nephew of the full blood, Maura Sambrano and Gonzalo Castro. According to the stipulation of facts, plaintiffs are all heirs of the deceased Francisca Valdez.

During the lifetime of the deceased Francisca Valdez, she applied for the registration in her name of the parcel of land in dispute, the same having been adjudicated by the lower court in her favor, but only on July 16, 1924, was the corresponding original certificate of title (No. 27521) issued. On June 20, 1924, that is, one day before

the demise of Francisca Valdez, and while she was in a state of unconsciousness, Fermin Benavince, a notary public of the municipality of Rosales, Ulpiano Zambrano, Antonio Lopez, and Nicolas Rosario prepared a deed of purchase and sale of the parcel of land described in paragraph 4 of the reamended complaint, wherein Francisca Valdez appeared as the vendor, Ulpiano Zambrano as the vendee, and Nicolas Rosario and Antonio Lopez as witnesses. Said deed appears to have been acknowledged by the supposed vendor Francisca Valdez on June 21, 1924, before notary public Fermin Benavince (Exhibit F—Valdez). The land in question has always been in the possession of the heirs of the deceased Francisca Valdez, and when the intestacy of said deceased was opened, said land passed to the possession of Esteban Valdez, as administrator of the properties of the deceased Francisca Valdez appointed by the trial court in the intestate proceeding (civil case No. 1209).

Through a motion filed by Ulpiano Zambrano, dated September 3, 1924, said Ulpiano Zambrano obtained, by virtue of an order of said court dated November 15, 1924, entered in registration case No. 4854, G. L. R. O. Record No. 24454, the cancellation of original certificate of title No. 27521 in the name of the deceased Francisca Valdez covering the disputed parcel of land and the issuance, in its stead, of transfer certificate of title No. 12205 in favor of said Ulpiano Zambrano. Only July 14, 1926, Esteban Valdez, in his capacity as judicial administrator of the properties left by Francisca Valdez, filed a motion for reconsideration, asking for the setting aside of the said court's order of November 15, 1924, entered in registration case No. 4854, G. L. R. O. Record No. 24454, and the said court, granting the motion for reconsideration, entered under date of July 31, 1926, an order in the same registration case, declaring null and void transfer certificate of title No. 12205 in favor of Ulpiano Zambrano. Of this order the register of deeds of Pangasinan was notified.

On February 24, 1925, Ulpiano Zambrano executed a deed of sale in favor of Macario C. David and his niece Pastora Zambrano, purporting to have sold ¼ of the land in controversy to said Macario C. David, and the remaining ¾ to said Pastora Zambrano (Exhibit 2—defendant). As a result of this supposed conveyance of the land in question by Ulpiano Zambrano to Macario C. David and Pastora Zambrano, transfer certificate of title No. 2481 was issued in favor of said supposed purchasers.

By reason of the manner and form in which Fermin Benavince, Ulpiano Zambrano, Nicolas Rosario, and Antonio Lopez prepared the deed of purchase and sale supposedly executed by the deceased Francisca Valdez in favor of said

Ulpiano Zambrano and the manner in which the thumb mark of said deceased on that deed was procured, Esteban Valdez, judicial administrator of the intestacy of Francisca Valdez, filed a complaint in the justice of the peace court of Rosales, Pangasinan, against Fermin Benavince, Ulpiano Zambrano, Nicolas Rosario, and Antonio Lopez for the crime of falsification of public document. After the proper preliminary investigation, and once the cause was elevated to the Court of First Instance, said cause was docketed therein as criminal case No. 9378. Defendant Angel B. Pine was one of the six bondsmen for the provisional liberty of the accused, and every time that said court ordered the appearance of said accused, defendant Angel B. Pine was invariably notified to bring the said accused before the court. In said criminal case the accused Fermin Benavince, Ulpiano Zambrano, Nicolas Rosario, and Antonio Lopez were found by the Court of First Instance guilty of the crime alleged in the information and convicted by said court to suffer a certain penalty. From said judgment the accused appealed to this Supreme Court, and this Court affirmed the judgment of conviction, with a modification consisting in the increase of the penalty imposed. While criminal case No. 9578 was pending trial in the Court of First Instance, Pastora Zambrano executed on September 10, 1925, an instrument in favor of defendant Angel B. Pine purporting to sell to the latter ¾ of the land in litigation (Exhibit 4—defendant). On the 17th of the same month and year, Macario C. David also executed another instrument in favor of Mariano David, purporting to sell to the latter the remaining ¼ of the same land (Exhibit 3—defendant). Mariano David is a brother-in-law of defendant, having married a sister of the latter.

On March 29, 1926, Mariano David, in turn, executed a supposed deed of sale of said ¼ of the land in litigation to the same defendant Angel B. Pine (Exhibit 5—defendant). All said documents, the one executed by Ulpiano Zambrano in favor of Pastora Zambrano and Macario C. David, that executed by Macario C. David in favor of Mariano David, and those executed by Pastora Zambrano and Mariano David in favor of defendant Angel B. Pine, were registered in the Registry of Property of Pangasinan and noted on transfer certificate of title No. 2481. In cadastral case No. 28, cadastral record No. 715 of Rosales, Pangasinan, the parcel of land in dispute was adjudicated to defendant Angel B. Pine.

On October 3, 1927, Esteban Valdez, in his capacity as judicial administrator of the properties of Francisca Valdez, filed a motion in said cadastral case, asking that the decision in favor of Angel B. Pine concerning lot 1847,

which is the same parcel of land here disputed, be set aside, and the court, passing upon said motion, denied the same because the said decision had become final. (Of course, that was error because the land being already covered by a Torrens certificate of title issued in an earlier registration case, the court had no jurisdiction to again decree the registration thereof in the cadastral case—Reyes *vs.* Borbon (50 Phil., 791)—the jurisdiction of the court in the cadastral case being limited to the necessary correction of technical errors in the description of the land, provided such corrections do not impair the substantial rights of the registered owner, and such jurisdiction cannot operate to deprive the registered owner of his title—Pamintuan *vs.* San Agustin (43 Phil., 568).

On or about the month of November, 1926, defendant Angel B. Pine filed a complaint for preliminary injunction against Ines Valdez, Victoriano Valdez, Esteban Valdez, Proceso Ramirez and Francisco Valdez. Said complaint involved the same land in question herein and was docketed in the trial court as civil case No. 4789, said court issuing the writ of preliminary injunction sought against the therein defendants, which writ was later dissolved by the same court in its order dated November 26, 1926. Said civil case No. 4789 was dismissed by the same court by an order dated February 8, 1921, for failure to prosecute (Exhibit 13—defendant). After the execution by Pastora Zambrano and Mariano David of the instruments (Exhibits 4 and 5), a new transfer certificate of title (No. 2846) was issued in the name of defendant Angel B. Pine, it appearing therein that the parcel of land in question was the conjugal property of said defendant and his wife. In cadastral case No. 28, of Rosales, Pangasinan, there was issued on January 30, 1934, in favor of defendant Angel B. Pine and his wife transfer certificate of title No. 8384, in place of transfer certificate of title No. 2446.

On October 11, 1934, plaintiff Estefania Valdez, one of the heirs of the deceased Francisca Valdez, sold to intervenor Celerina Maimban a portion of two hectares, more or less, of the land in question, executing the deed of sale (Exhibit 1—intervenor), and said vendee has since then been in the actual and material possession of said portion.

Upon the vital question of whether or not defendant Angel B. Pine was a purchaser in good faith of the land in litigation, the learned trial judge Braulio Bejasa, found negatively.

There exists in the record of the oral evidence a testimony of defendant and appellant which, in our opinion, furnishes a solid basis for concluding that he is not a pur-

chaser in good faith. Upon his cross-examination by adverse counsel, among other things, he declared:

"P. Y cuando fueron acusados Fermín Benavince, Ulpiano Zambrano, Nicolás Rosario y Abdón López en la causa criminal No. 9578, era presidente municipal de Rosales Fermin Binavince, no es verdad?—R. No. era Presidente municipal todavía Fermín Benavince, porque la acusación se presentó con motivo de las elecciones, era una *acusación sistemática.*" (T. s. n., p. 75, Palisoc—Italics supplied.)

His statement that the charge against Fermin Benavince and his co-accused was a "systematic accusation" necessarily implies that, according to him, it was not well founded, or that it was false, because a truthful accusation cannot properly be called systematic. He could not have said that the accusation was systematic, and he could not have considered it as unfounded or false, without knowing, first of all, what public document it was that had been alleged to have been falsified by Fermin Benavince and his co-accused, and without having made an inquiry from the accused themselves, if not from other witnesses, as to the truth or falsity of the charge, supposing that he was up to that time an innocent third party to the transaction. From such an inquiry he should have understood, as the intelligent person and prominent political figure that he was at the place, that if he were to avoid acting in a way that might prejudice the rights and interests of the persons who were alleged to be the victims of the forgery —the heirs of Francisca Valdez—as good faith would dictate, he should wait for the final outcome of the criminal case before deciding to buy the property, and only so decide in case the accused were acquitted by final judgment of the competent courts. His conduct in purchasing ¾ of the land while the criminal case for falsification of public document was still pending, and in purchasing the remaining ¼ after this Supreme Court had affirmed, with an increase of the penalty, the lower court's judgment of conviction therein—supposing that (Exhibits 4—defendant and 5—defendant) executed for the purpose were not in themselves fictitious—is utterly incompatible with good faith; and much more so if we take into consideration the fact, conclusively proven by his attitude in this case, that he entered into the transaction determined to insist upon his alleged purchase even in case of final conviction of the persons accused of having forged the document supposed to be the root of his pretended title.

Besides the above-quoted testimony of said defendant and appellant, the trial court also took into consideration the following circumstances, which appear to have been established beyond dispute: (1) that said defendant and appellant was one of the six bondsmen for the provisional

release of the accused; and (2) that every time that the court ordered the appearance of said accused, said defendant and appellant (along with the other bondsmen) was notified to present them to the court. It has been stipulated by the parties as a fact that the bonds thus posted are (Exhibits K–Valdez and K–1—Valdez [Record on Appeal, pp. 79, 126–131]), wherein it is expressly recited that the criminal charge is for falsification of public document. Defendant and appellant admits that Fermin Benavince is a friend of his and that said Benavince and the other accused belong to the same political party as himself. Under the circumstances it is beyond rational comprehension that defendant and appellant should not have desired and sought information as to what public document said accused were being charged with having falsified, not only because he was a friend of the principal accused but also the political colleague of all of them, and because he was being requested to be one of their bondsmen. While he testified in answer to the trial judge (p. 75, t. s. n., Palisoc) that Fermin Benavince was accused of falsification of public document, but that he did not know what kind of document, even at that late date when he was testifying, the trial judge who saw and heard him testify and presumably observed his demeanor, concluded that he *did* know. It must have been because it does at times happen that a person's very pretense or protestation of ignorance of a fact betrays his guilty knowledge of it.

In the very nature of things, the trial judge had to weigh the comparative credibility of the testimony given by each witness in this three-cornered litigation, and to rely very much upon his personal observation of the demeanor of the witnesses testifying before him and their manner of testifying. It is a well-settled doctrine in this jurisdiction, repeatedly upheld by this Court, that the findings of fact made in the judgment of the trial court should not be disturbed here, unless the trial court failed to take into consideration some material fact or circumstance or to weigh accurately all material facts and circumstances presented to it for consideration. (Baltazar *vs.* Albert, 33 Phil., 336; United States *vs.* Melad, 27 Phil., 488; United States *vs.* Benitez, 18 Phil., 513; United States *vs.* Pico, 15 Phil., 549; United States *vs.* Rice, 27 Phil., 641; Velasco *vs.* Masa, 10 Phil., 279; Lim Soco *vs.* Roxas, 26 Phil., 609; United States *vs.* Claro, 32 Phil., 414; Co Tiam *vs.* Di Ping Jo, 11 Phil., 10).

For the foregoing considerations, we affirm the judgment appealed from, with costs against the appellant. So ordered.

Ozaeta, De Joya, Perfecto, and *Bengzon, JJ.,* concur.

Judgment affirmed.

[No. L-13. March 20, 1946]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FRANCISCO QUEBRAL Y ARCILLA, LEONARDO HILARIO Y SANTOS, JOHN DOE, and RICHARD DOE, defendants. FRANCISCO QUEBRAL Y ARCILLA, appellant.

CRIMINAL PROCEDURE; APPEAL; FINALITY OF JUDGMENT UPON PARTIAL OR TOTAL SERVICE OF SENTENCE.—Although the parties filed their respective briefs on the merits and raised no question as to the appealability of the sentence of the trial court, we cannot ignore our lack of jurisdiction to entertain this appeal. As stated by the trial court and concurred in by counsel *de oficio* for the appellant in this court, the sentence against the accused had become final under section 7 of Rule 116 of the Rules of Court, inasmuch as the said accused had commenced to serve or extinguish it. Said section 7 of Rule 116 reads in part as follows: "A judgment in criminal case becomes final after the lapse of the period for perfecting an appeal, *or when the sentence has been partially* or totally *satisfied or served,* or the defendant has expressly waived in writing his right to appeal."

APPEAL from a judgment of the Court of First Instance of Manila. Diaz, J.

The facts are stated in the opinion of the court.

Felix D. Agcaoili for appellant.

Assistant Solicitor-General Cañizares and *Solicitor Umali* for appellee.

OZAETA, *J.:*

The appellant, Francisco Quebral y Arcilla, together with three other persons who have not yet been apprehended, was accused of the crime of robbery in band alleged to have been committed on or about the 13th of March, 1945, in the City of Manila, it being alleged in the information that the said accused and his three companions, all armed with firearms and conspiring together and helping one another, did then and there wilfully, unlawfully, and feloniously, by means of intimidation—by threatening to shoot Antonio Sy and Domingo Tan if the latter would not deliver their money and other personal belongings to them—forcibly take and carry away from the said Antonio Sy jewelry and cash of the total value of ₱530, to the damage and prejudice of the said owner in the said amount.

The said accused was arraigned on April 21, 1945, and entered the plea of not guilty. The trial of the cause began on April 26, 1945, and was continued on May 4, 1945, when the prosecution rested after having presented three witnesses. The continuation of the trial was then set for May 8, 1945. On that date, instead of presenting evidence in his defense the accused, through his attorney, Pascual

Santos, moved the court to permit him to withdraw his former plea of not guilty and to substitute it with that of guilty. That motion was granted, the information was again read to the accused, and the latter voluntarily entered the plea of guilty. Thereupon the court (Judge Pompeyo Diaz presiding) found him guilty as charged and sentenced him to suffer an indeterminate sentence of not less than two (2) years, four (4) months, and one (1) day of *prisión correccional* and not more than ten years and one day of *prisión mayor*, to indemnify the offended party in the sum of ₱530, and to pay the costs.

The sentence was reduced to writing and signed by the judge and read to the accused on the same day, May 8, 1945. On that same day the accused began to serve his sentence in Bilibid Prison.

Two weeks later, that is to say, on May 22, the accused, through another attorney, Engracio Clemeña, filed a motion asking that he be permitted to withdraw his last plea of guilty and to maintain his former plea of not guilty, that the case be reopened, and that he be permitted to present evidence in his favor. On the same date the trial court denied the motion upon the ground that, the accused having commenced to serve his sentence, the same had become final under section 7 of Rule 116 and that therefore the court had no jurisdiction to modify it. On the following day, May 23, 1945, the accused filed a notice of appeal and tendered a cash bond of ₱2,000 (which was substituted on June 21, 1945, with a personal bond in the same amount). Both the appeal and the bond were approved by the court.

Although the parties filed their respective briefs on the merits and raised no question as to the appealability of the sentence of the trial court, we cannot ignore our lack of jurisdiction to entertain this appeal. As stated by the trial court and concurred in by counsel *de oficio* for the appellant in this Court, the sentence against the accused had become final under section 7 of Rule 116 of the Rules of Court, inasmuch as the said accused had commenced to serve or extinguish it. Said section 7 of Rule 116 reads in part as follows: "A judgment in criminal case becomes final after the lapse of the period for perfecting an appeal, *or when the sentence has been partially* or totally *satisfied or served*, or the defendant has expressly waived in writing his right to appeal." That rule is a restatement in statutory form of the doctrine laid down by this Supreme Court in the cases of United States *vs.* Hart (24 Phil., 578), and Gregorio *vs.* Director of Prisons (43 Phil., 650). Needless to say, a final and executory judgment is not appealable and the appellate court has no jurisdiction to review, reverse, or modify it. Any error prejudicial to the accused

that may have been committed by the trial court in meting out the penalty can be corrected only by executive clemency.

Wherefore, the appeal is dismissed, without any finding as to costs in this instance.

De Joya, Perfecto, Hilado, and *Bengzon, JJ.,* concur.

Appeal dismissed.

[CA–No. 4. March 21, 1946]

In the matter of the testate estate of the late Encarnacion Neyra. TRINIDAD NEYRA, petitioner and appellee, *vs.* TEODORA NEYRA, PILAR DE GUZMAN and MARIA JACOBO VDA. DE BLANCO, oppositors and appellants.

TEODORA NEYRA, PILAR DE GUZMAN and MARIA JACOBO VDA. DE BLANCO, petitioners and appellants, *vs.* TRINIDAD NEYRA and EUSTAQUIO MENDOZA, oppositors and appellees.

1. WILLS; TESTAMENTARY CAPACITY, DEFINED.—Testamentary capacity is the capacity to comprehend the nature of the transaction in which the testator is engaged at the time, to recollect the property to be disposed of, and the persons who would naturally be supposed to have claims upon the testator, and to comprehend the manner in which the instrument will distribute his property among the objects of his bounty.
2. ID.; ID.; INSOMNIA, TUBERCULOSIS, DIABETES, NOT SUFFICIENT TO DESTROY MENTAL CAPACITY.—Insomnia, in spite of the testimony of two doctors who testified for the opponents to the probate of a will, who stated that it tended to destroy mental capacity, was held not to affect the full possession of the mental faculties deemed necessary and sufficient for its execution. (Caguioa *vs.* Calderon, 20 Phil., 400.) The testatrix was held to have been *compos mentis,* in spite of the physician's testimony to the contrary, to the effect that she was very weak, being in the third or last stage of tuberculosis. (Yap Tua *vs.* Yap Ca Kuan, 27 Phil., 579.) The testimony of the attending physician that the deceased was suffering from diabetes and had been in a comatose condition for several days, prior to his death, was held not sufficient to establish testamentary incapacity, in view of the positive statement of several credible witnesses that he was conscious and able to understand what was said to him and to communicate his desires. (Samson *vs.* Corrales Tan Quintin, 44 Phil., 573.)
3. ID.; ID.; OLD AGE OR ILL HEALTH INSUFFICIENT TO INVALIDATE WILL.—Where the mind of the testator is in perfectly sound condition, neither old age, nor ill health, nor the fact that somebody had to guide his hand in order that he might sign, is sufficient to invalidate his will.
4. ID.; ID.; EVIDENCE OF SOUND MIND.—Where it appears that *a few hours* and also a few days after the execution of the will, the testator intelligently and intelligibly conversed with other persons, although lying down and unable to move or stand up unassisted, but could still effect the sale of property belonging to him, these circumstances show that the testator was in a

perfectly sound mental condition at the time of executing the will.

5. ID.; ID.; SLEEPING SICKNESS (ADDISON'S DISEASE) DOES NOT IMPAIR MENTAL FACULTIES.—The mental faculties of persons suffering from Addison's disease, like the testatrix in this case, remain unimpaired, partly due to the fact that, on account of the sleep they enjoy, they necessarily receive the benefit of physical and mental rest. And like patients suffering from tuberculosis, insomnia or diabetes, they preserve their mental faculties until the moments of their death.

6. ID.; SIGNING BY THUMBMARK; PRESENCE OF ATTESTING WITNESSES; TEST OF.—The oppositors also claim that the attesting witnesses were not present, at the time that the testatrix thumb marked the will in question, on her bed, in the *sala* of the house, as they were allegedly in the *caida*. But it has been fully shown that the attesting witnesses were present at the time of the signing and execution of the agreement and will in question, in the *sala*, where the testatrix was lying on her bed. The true test is not whether they actually saw each other, at the time of the signing of the will, but whether they might have seen each other sign, had they chosen to do so; and the attesting witnesses actually saw it in this case. (Jaboneta *vs.* Bustillo, 5 Phil., 541.) And the thumb mark placed by the testatrix on the will is equivalent to her signature. (Yap Tua *vs.* Yap Ca Kuan, *supra.*)

7. APPEAL; FINDINGS OF FACT OF TRIAL COURT, WHEN TO BE REVERSED.—This court will not reverse any findings of fact by the trial court made upon conflicting testimony and depending largely upon the credibility of witnesses, who testified in the presence of the trial judge, unless the court below failed to take into consideration some material facts or circumstances, or to weigh accurately all of the material facts and circumstances presented to it for consideration.

APPEAL from a judgment of the Court of First Instance of Manila. Diaz, J.

The facts are stated in the opinion of the court.

Lucio Javillonar for oppositors and appellants.
Alejandro M. Panis for applicants and appellees.

DE JOYA, *J.:*

This is an appeal from a decree rendered by the Hon. Gervasio Diaz, Judge of the Court of First Instance of the City of Manila, on December 3, 1943, admitting to probate a will dated November 3, 1942, executed by the deceased Encarnacion Neyra; at the same time denying the probate of a previous will dated September 14, 1939, alleged to have been executed by the said testatrix.

Trinidad Neyra, beneficiary in the will executed on November 3, 1942, filed, on November 10, 1942, a petition in the Court of First Instance of Manila, for the probate of said will.

On December 19, 1942, Teodora Neyra, Pilar de Guzman, and Maria Jacobo Vda. de Blanco, who had not been named

as beneficiaries in said will, filed an opposition to the probate of the said will dated November 3, 1942, alleging (1) that at the time of the alleged execution of the said will, the testatrix Encarnacion Neyra no longer possessed testamentary capacity; (2) that her thumb marks on said instrument had been procured by means of fraud by petitioner Trinidad Neyra, and that Encarnacion Neyra never intended to consider said document as will; (3) that the alleged will, dated November 3, 1942, had not been executed in the manner and form prescribed by law; and (4) that Encarnacion Neyra, since September 14, 1939, had executed a will, naming as beneficiaries said oppositors and others and that said will had never been revoked or amended in any manner whatsoever.

On December 26, 1942, petitioner Trinidad Neyra filed a reply denying the allegations in the opposition.

Subsequently, said oppositors filed a counter petition, asking for the probate of the first will executed by Encarnacion Neyra, on September 14, 1939, marked as Exhibit 16. On March 16, 1943, the legatees Trinidad Neyra and Eustaquio Mendoza filed their opposition to the probate of said will marked as Exhibit 16, and amended said opposition, on September 15, 1943, to which Teodora Neyra and the others filed a reply, on September 20, 1943.

On the dates set for the hearing on the petition filed by Trinidad Neyra, and the counter petition mentioned above, said petitioner as well as the oppositors, presented evidence, testimonial and documentary. The witnesses presented by the petitioner Trinidad Neyra were Mons. Vicente Fernandez, Rev. Fr. Teodoro Garcia, Sor. Andrea Montejo, Dr. Moises B. Abad, Dr. Eladio A. Aldecoa, Atty. Ricardo Sikat, petitioner Trinidad Neyra herself, and Atty. Alejandro M. Panis, who had acted as scrivener in the preparation of said will dated November 3, 1942.

Teodora Neyra and the other oppositors also presented several witnesses, the principal among whom were Presentacion Blanco, Ceferina de la Cruz, Acislo Manuel, Dr. Dionisio Parulan, an alleged medical expert, and the oppositors Teodora Neyra and Pilar de Guzman themselves.

After considering the evidence, the lower court rendered a decree admitting to probate the will dated November 3, 1942; at the same time denying the probate of the will dated September 14, 1939.

From said decision Teodora Neyra and the other oppositors appealed to the Court of Appeals for the City of Manila, assigning several errors, which may be reduced to the following, to wit, that the trial court erred (1) in finding that Encarnacion Neyra wanted to make a new will; (2) in declaring that there was reconciliation between

Encarnacion Neyra and her sister Trinidad; (3) in accepting as satisfactory the evidence submitted by the petitioner; (4) in ignoring the evidence submitted by the oppositors; and (5) in not admitting to probate the will dated September 14, 1939.

The evidence, testimonial and documentary, adduced during the trial of the case in the court below, has satisfactorily and sufficiently established the following facts:

That Don Severo Neyra died intestate in the City of Manila, on May 6, 1938, leaving certain properties and two children, by his first marriage, named Encarnacion Neyra and Trinidad Neyra, and several other relatives; that after the death of Don Severo Neyra, the two sisters, Encarnacion Neyra and Trinidad Neyra, had serious quarrels, in connection with the properties left by their deceased father, and so serious were their dissensions that, after March 31, 1939, they had two litigations in the Court of First Instance of Manila, concerning said properties (Exhibits 8 and 9): In the first case, filed on March 31, 1939, Trinidad Neyra and others demanded from Encarnacion Neyra et al. the annulment of the sale of the property located at No. 366 Raon Street, Manila, and it was finally decided in favor of the defendants in the Court of First Instance and in the Court of Appeals, on December 21, 1943 (G. R. No. 8162, Exhibit 9).

In the second case, filed on October 25, 1939, Trinidad Neyra demanded from Encarnacion Neyra, one-half (½) of the property described therein, and one-half (½) of the rents, and the Court of First Instance decided in favor of the plaintiff, but at the same time awarded in favor of the defendant ₱727.77, under her counterclaim; and Trinidad Neyra again elevated the case to the Court of Appeals for Manila (G. R. No. 8075) Exhibit 8, which was decided, pursuant to the document of compromise marked as Exhibit D; and the petition for reconsideration filed therein still remains undecided.

That Encarnacion Neyra, who had remained single, and who had no longer any ascendants, executed a will on September 14, 1939, marked Exhibit 16, disposing of her properties in favor of the "Congregación de Religiosas de la Virgen Maria" and her other relatives named Teodora Neyra, Pilar de Guzman and Maria Jacobo Vda. de Blanco, making no provision whatsoever in said will in favor of her only sister Trinidad Neyra, who had become her bitter enemy; that when the said will was brought to the attention of the authorities of said Congregation, after due deliberation and consideration, said religious organization declined the bounty offered by Encarnacion Neyra, and said decision of the Congregation was duly communicated to her; that

in order to overcome the difficulties encountered by said religious organization in not accepting the generosity of Encarnacion Neyra, the latter decided to make a new will, and for that purpose, about one week before her death, sent for one Ricardo Sikat, an attorney working in the Law Offices of Messrs. Feria and La-O, and gave him instructions for the preparation of a *new will;* that Attorney Sikat, instead of preparing a new will, in accordance with the express instructions given by Encarnacion Neyra, merely prepared a draft in the form of a codicil, marked as Exhibit M, amending said will, dated September 14, 1939, again naming said religious organization, among others, as beneficiary, and said draft of a codicil was also forwarded to the authorities of said religious organization, for their consideration and acceptance.

In the meanwhile, Encarnacion Neyra had become seriously ill, suffering from Addison's disease, and on October 31, 1942, she sent for her religious adviser and confessor, Mons. Vicente Fernandez of the Quiapo Church to make confession, after which she expressed her desire to have a mass celebrated in her house at No. 366 Raon Street, City of Manila, so that she might take holy communion, in view of her condition; that following the request of Encarnacion Neyra, Mons. Fernandez caused the necessary arrangements to be made for the celebration of holy mass in the house of Encarnacion Neyra, and, as a matter of fact, on November 1, 1942, holy mass was solemnized in her house, Fr. Teodoro Garcia, also of the Quiapo Church, officiating in said ceremony, on which occasion, Encarnacion Neyra, who remained in bed, took holy communion; that after said religious ceremony had been terminated, Father Garcia talked to Encarnacion Neyra and advised reconciliation between the two sisters, Encarnacion Neyra and Trinidad Neyra. Encarnacion Neyra accepted said advice and at about noon of the same day (November 1, 1942), sent Eustaquio Mendoza to fetch her sister Trinidad Neyra, who came at about 2:30 o'clock that same afternoon; that on seeing one another, the two greeted each other in a most affectionate manner, and became reconciled; that the two had a long and cordial conversation, in the course of which the two sisters also talked about the properties left by their deceased father and their litigations which had reached the Court of Appeals for the City of Manila, and they agreed to have the said appeal dismissed, on the condition that the property involved therein, consisting of a small house and lot, should be given exclusively to Trinidad Neyra, on the condition that the latter should waive her claim for her share in the rents of said property, while under the administration of Encarnacion Neyra, and that

the two should renounce their mutual claims against one another. It was also agreed between the two sisters to send for Atty. Alejandro M. Panis, to prepare the necessary document embodying the said agreement, but Attorney Panis could come only in the afternoon of the following day, November 2, 1942, when Encarnacion gave him instructions for the preparation of the document embodying their agreement, and other instructions relative to the disposition she wanted to make of her properties in her last will and testament; that Attorney Panis prepared said document of compromise or agreement marked as Exhibit D, as well as the new will and testament marked as Exhibit C, naming Trinidad Neyra and Eustaquio Mendoza beneficiaries therein, pursuant to the express instructions given by Encarnacion Neyra, and said instruments were ready for signature on November 3, 1942; that in the afternoon of that day, November 3, 1942, Attorney Panis read said will and testament marked as Exhibit D to Encarnacion Neyra slowly and in a loud voice, in the presence of Fr. Teodoro Garcia, Dr. Moises B. Abad, Dr. Eladio Aldecoa, herein petitioner Trinidad Neyra, and others, after which he asked her if its terms were in accordance with her wishes, if she had anything else to add, or anything to be changed in said will; and as Encarnacion Neyra stated that the terms of said will were in accordance with her wishes and express instructions, she asked for the pad and the will Exhibit C and, with the help of a son of herein petitioner, placed her thumb mark at the foot of said will, in the presence of the three attesting witnesses, Dr. Moises B. Abad, Dr. Eladio R. Aldecoa, and Atty. Alejandro M. Panis, after which the attesting witnesses signed at the foot of the document in the presence of the testatrix Encarnacion Neyra, and of each and everyone of the other attesting witnesses. Fr. Teodoro Garcia and petitioner Trinidad Neyra and several others were also present.

On November 4, 1942, the testatrix Encarnacion Neyra, due to a heart attack, unexpectedly died.

Although the "Congregación de Religiosas de la Virgen Maria" had again decided not to accept the provision made in its favor by the testatrix Encarnacion Neyra in the proposed codicil prepared by Atty. Ricardo Sikat, said decision could not be communicated to the testatrix, before her death.

Mons. Vicente Fernandez and Fr. Teodoro Garcia testified as to the request made on October 31, 1942, by Encarnacion Neyra for the celebration of holy mass in her house, on November 1, 1942; that said mass was in fact solemnized in her house, on that date, in the course of which the testatrix Encarnacion Neyra took holy commu-

nion; that on the same day, after the mass, Encarnacion held a long conversation with Father Garcia, in the course of which, said priest advised her to have reconciliation with her sister Trinidad; and that said advice was accepted by Encarnacion.

By the testimony of Trinidad Neyra, it has been shown that Encarnacion sent Eustaquio Mendoza to fetch her, and that in fact she came to the house of Encarnacion, at about 2:30 o'clock in the afternoon that same day, November 1, 1942, with said Eustaquio Mendoza; that on seeing one another, Encarnacion and Trinidad Neyra greeted each other most affectionately, forgiving one another, after which they talked about the property left by their deceased father and the litigation pending between them; and the two sisters agreed to settle their case, which had been elevated to the Court of Appeals for the City of Manila, concerning a certain house and lot, on the understanding that said property should be given exclusively to Trinidad, and that the latter should renounce her claim against Encarnacion, for her share in the rents collected on said property, and, at the same time, Encarnacion renounced her claim for ₱727.77 against Trinidad; and that it was also agreed between the two sisters that Atty. Alejandro M. Panis should be called to prepare the necessary papers for the settlement of said case. Presentacion Blanco, a witness for the oppositors, also testified substantially to the foregoing facts.

By the testimony of Trinidad Neyra and Atty. Alejandro M. Panis, and the other attesting witnesses, it has also been shown that Atty. Alejandro M. Panis came in the afternoon of the following day, November 2, 1942, and received instructions from Encarnacion Neyra, not only for the preparation of said agreement, but also for the preparation of a new will, and consequently Attorney Panis prepared said document of compromise and the will, dated November 3, 1942, which were both thumb marked, in duplicate, in the afternoon of that day, by Encarnacion Neyra, who was then of sound mind, as shown by her appearance and conversation, aided by a son of Trinidad Neyra, on her bed in the *sala*, in the presence of the attesting witnesses, Dr. Moises B. Abad, Dr. Eladio R. Aldecoa, and Atty. Alejandro M. Panis, who signed in the presence of the testatrix and of each other.

Father Teodoro Garcia was also present at the signing of the will at the request of Encarnacion Neyra, and so was Trinidad Neyra.

On November 4, 1942, due to a heart attack as a consequence of Addison's disease, perhaps, Encarnacion Neyra expired, at about 3 o'clock in the morning.

Oppositor Teodora Neyra, her *young* daughter Ceferina de la Cruz and Presentacion Blanco, daughter of oppositor Maria Jacobo Vda. de Blanco, practically corroborated the testimony of the witnesses of the petitioner, with reference to the signing of documents, in the bedroom of Encarnacion Neyra, on November 3, 1942.

Teodora Neyra, Presentacion Blanco and Ceferina de la Cruz, witnesses for the oppositors, testified, however, that when the thumb mark of Encarnacion Neyra was affixed, as stated above, to the document of compromise in question, dated November 3, 1942, she was sleeping on her bed in the *sala;* and that the attesting witnesses were not present, as they were in the *caida.*

But Ceferina de la Cruz, witness for the oppositors, also stated that the attesting witnesses signed the documents thumb marked by Encarnacion Neyra, in the *sala* near her bed, thus contradicting herself and Teodora Neyra and Presentacion Blanco.

Strange to say, Teodora Neyra, Presentacion Blanco and Ceferina de la Cruz also testified that Encarnacion Neyra's thumb mark was affixed to the will, only in the morning of November 4, 1942, by Trinidad Neyra and Ildefonso del Barrio, when Encarnacion was already dead.

The testimony of Dr. Dionisio Parulan, alleged medical expert, as to the nature and effects of Addison's disease, is obsolutely unreliable. He had never seen or talked to the testatrix Encarnacion Neyra.

According to medical authorities, the cause or causes of the sleeping sickness, known as Addison's disease, are not yet fully known; that persons attacked by said disease often live as long as ten (10) years after the first attack, while others die after a few weeks only, and that as the disease progresses, asthenia sets in, and from 80 per cent to 90 per cent of the patients develop tuberculosis, and complications of the heart also appear. (Cecil, Textbook of Medicine, 3rd ed., 1935, pp. 1250, 1252, 1253; McCrae, Isler's Modern Medicine, 3rd ed., Vol. V, pp. 272–279.)

And it has been conclusively shown in this case that the testatrix Encarnacion Neyra, at the age of 48, died on November 4, 1942, due to a heart attack, after an illness of about two (2) years.

In connection with testamentary capacity, in several cases, this Court has considered the testimony of witnesses, who had known and talked to the testators, more trustworthy than the testimony of alleged medical experts.

Testamentary capacity is the capacity to comprehend the nature of the transaction in which the testator is engaged at the time, to recollect the property to be disposed of, and the persons who would naturally be supposed to have

claims upon the testator, and to comprehend the manner in which the instrument will distribute his property among the objects of his bounty. (Bugnao *vs.* Ubag, 14 Phil., 163.)

Insomnia, in spite of the testimony of two doctors who testified for the opponents to the probate of a will, who stated that it tended to destroy mental capacity, was held not to affect the full possession of the mental faculties deemed necessary and sufficient for its execution. (Caguioa *vs.* Calderon, 20 Phil., 400.) The testatrix was held to have been *compos mentis*, in spite of the physician's testimony to the contrary, to the effect that she was very weak, being in the third or last stage of tuberculosis. (Yap Tua *vs.* Yap Ca Kuan, 27 Phil., 579.) The testimony of the attending physician that the deceased was suffering from diabetes and had been in a comatose condition for several days, prior to his death, was held not sufficent to establish testamentary incapacity, in view of the positive statement of several credible witnesses that he was conscious and able to understand what was said to him and to communicate his desires. (Samson *vs.* Corrales Tan Quintin, 44 Phil., 573.) Where the mind of the testator is in perfectly sound condition, neither old age, nor ill health, nor the fact that somebody had to guide his hand in order that he might sign, is sufficient to invalidate his will. (Amata *vs.* Tablizo, 48 Phil., 485.)

Where it appears that *a few hours* and also a few days after the execution of the will, the testator intelligently and intelligibly conversed with other persons, although lying down and unable to move or stand up unassisted, but could still effect the sale of property belonging to him, these circumstances show that the testator was in a perfectly sound mental condition at the time of executing the will. (Amata *vs.* Tablizo, 48 Phil., 485.)

Presentacion Blanco, in the course of her cross-examination, frankly admitted that, in the morning and also at about 6 o'clock in the afternoon of November 3, 1942, Encarnacion Neyra talked to her and that they understood each other clearly, thus showing that the testatrix was really of sound mind, at the time of the signing and execution of the agreement and will in question.

It may, therefore, be reasonably concluded that the mental faculties of persons suffering from Addison's disease like the testatrix in this case, remain unimpaired, partly due to the fact that, on account of the sleep they enjoy, they necessarily receive the benefit of physical and mental rest. And that like patients suffering from tuberculosis, insomnia or diabetes, they preserve their mental faculties until the moments of their death.

Judging by the authorities above cited, the conclusion made by the trial court that the testatrix Encarnacion Neyra was of sound mind and possessed testamentary capacity, at the time of the execution of the will, cannot be properly disturbed.

The oppositors also claim that the attesting witnesses were not present, at the time that the testatrix thumb marked the will in question, on her bed, in the *sala* of the house, as they were allegedly in the *caida*. But it has been fully shown that the attesting witnesses were present at the time of the signing and execution of the agreement and will in question, in the *sala*, where the testatrix was lying on her bed. The true test is not whether they actually saw each other, at the time of the signing of the will, but whether they might have seen each other sign, had they chosen to do so; and the attesting witnesses actually saw it in this case. (Jaboneta *vs.* Bustillo, 5 Phil., 541.) And the thumb mark placed by the testatrix on the will is equivalent to her signature. (Yap Tua *vs.* Yap Ca Kuan, 27 Phil., 579.)

The oppositors as well as their principal witnesses are all interested parties, as said oppositors had been named legatees in the will dated September 14, 1939, but eliminated from the will dated November 3, 1942.

On the other hand, the witnesses for the petitioner are all trustworthy men, who had absolutely no interest in the final outcome of this case. Two of them are ministers of the Gospel, while the three attesting witnesses are professional men of irreproachable character, who had known and seen and talked to the testatrix.

Furthermore, the testimony of the oppositors and their witnesses, to the effect that there could have been no reconciliation between the two sisters, and that the thumb mark of Encarnacion Neyra was affixed to the document embodying the agreement, while she was sleeping, on November 3, 1942, in their presence; and that her thumb mark was affixed to the will in question, when she was already dead, in the morning of November 4, 1942, within their view, is preposterous, to say the least. Said testimony is contrary to common sense. It violates all sense of proportion. The oppositors and their witnesses could not have told the truth; they have testified to brazen falsehoods; and they are, therefore, absolutely unworthy of belief. And to the evidence of the oppositors is completely applicable the rule *falsus in uno, falsus in omnibus*. (Gonzales *vs.* Mauricio, 53 Phil., 728, 735.)

In the brief presented by counsel for the oppositors and appellants, to show the alleged improbability of the reconciliation of the two sisters and the execution of the will,

dated November 3, 1942, they have erroneously placed great reliance on the fact that, up to October 31, 1942, the two sisters Encarnacion and Trinidad Neyra were bitter enemies. They were banking evidently on the common belief that the hatred of relatives is the most violent. Dreadful indeed are the feuds of relatives, and difficult the reconciliation. But they had forgotten the fact that Encarnacion Neyra was a religious and pious woman instructed in the ancient virtues of Christian faith and hope and charity, and that it was godly to forgive and better still to forget.

It was most natural that there should have been reconciliation between the two sisters, Encarnacion and Trinidad Neyra, as the latter is the nearest relative of the former, her only sister of the whole blood. The approach of imminent death must have evoked in her the tenderest recollections of childhood. And believing perhaps that her little triumphs had not always brought her happiness, and that she had not always been fair to her sister, who, in fact, had successively instituted two suits against her, to recover what was her due, and for which Encarnacion believed she must atone, she finally decided upon reconciliation, so that she might depart in peace.

The record shows that, of the two, Encarnacion lived in greater opulence, and that Trinidad had been demanding tenaciously her share; and as a Christian woman, Encarnacion must have known that no one has any right to enrich himself unjustly, at the expense of another. And it was, therefore, natural that Encarnacion should desire reconciliation with her sister Trinidad, and provide for her in her last will and testament.

As for Eustaquio Mendoza, who, according to the evidence, had served Encarnacion Neyra for so many years and so well, it was also natural that she should make some provision for him, as gratitude is the noblest sentiment that springs from the human heart.

The conduct of Encarnacion Neyra, in making altogether a new will, with new beneficiaries named therein, including principally her bitterest enemy of late, which is completely incompatible with the will, dated September 14, 1939, may really seem strange and unusual; but, as it has been truly said, above the logic of the head is the feeling in the heart, and the heart has reasons of its own which the head cannot always understand, as in the case of intuitive knowledge of eternal verity.

As Encarnacion Neyra felt the advent of immortality, she naturally wanted to follow "the path of the just, which is as the shining light that shineth more and more unto the perfect day," so that her memory may be blessed. As

a Christian woman, she must have loved justice, mercy and truth and to follow the law, for this is the whole duty of man.

In the present case, the Court cannot find any reason or justification to alter the conclusions set forth in the decree appealed from. This Court will not reverse any findings of fact by the trial court made upon conflicting testimony and depending largely upon the credibility of witnesses, who testified in the presence of the trial judge, unless the court below failed to take into consideration some material facts or circumstances, or to weigh accurately all of the material facts and circumstances presented to it for consideration. (Baltazar *vs.* Alberto, 33 Phil., 336; Melliza *vs.* Towle, 33 Phil., 345; Caragay *vs.* Arquiza, 53 Phil., 72, 79; Garcia *vs.* Garcia de Bartolome, 63 Phil., 419.)

After a careful consideration of the evidence and the law in this case, we find it legally impossible to sustain any of the errors assigned by the appellants. The judgment appealed from is, therefore, affirmed, with costs against the appellants. So ordered.

Ozaeta, Perfecto, Hilado, and *Bengzon, JJ.,* concur.

Judgment affirmed.

[No. L-70. Marzo 22, 1946]

EMILIO GÓMEZ, demandante y apelado, *contra* PERFECTO ALEJO, demandado y apelante

1. ACCIONES; DESAHUCIO; PENDENCIA DE OTRO ASUNTO ENTRE LAS MISMAS PARTES SOBRE LOS MISMOS MOTIVOS DE ACCIÓN.—El tribunal *a quo* parece creer que se trata de dos diferentes asuntos nada más que porque ambos se refieren a dos diferentes períodos de tiempo. Evidentemente esto es un error. El factor tiempo aquí no puede tener el efecto de diferenciar un asunto de otro por la sencilla razón de que (1) tanto en lo que respecta al requerimiento para dar por terminado el arrendamiento como (2) en lo relativo al cobro de los alquileres objeto de mora, el primer asunto tenía necesariamente que cubrir todo período de tiempo ulterior hasta la completa restitución de las fincas arrendadas y el pago completo de los alquileres devengados; en otras palabras, hasta la terminación definitiva del asunto, originariamente o en grado de apelación, mediante la ejecución de la correspondiente sentencia, o el cumplimiento voluntario por el demandado de lo ordenado en ella. A menos que el primer asunto se hubiese terminado por virtud de cualquiera de los modos señalados en nuestra ley de procedimiento civil, el demandante no podía incoar una nueva acción de desahucio contra el demandado so pretexto de un nuevo requerimiento, porque no sólo ello equivaldría a permitir la multiplicidad de pleitos, sino que podría dar lugar a vejaciones abrumándole a un inquilino con varias demandas de desahucio mediante diferentes y sucesivos requerimientos.

2. ID.; ID.; ID.; DESTRUCCIÓN DEL EXPENDIENTE ANTERIOR; RECOMPOSICIÓN.—En el presente caso ni siquiera se puede justificar la incoación del segundo pleito con la alegación de que el expediente del anterior se quemó con motivo de la tremenda conflagración en la batalla por la reconquista y liberación de Manila del yugo japonés, porque cabe un remedio y es la recomposición del expediente ya para proseguirlo, ya para sobreseerlo, si tal es la opción del demandante.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Manila. Roxas, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Manuel V. Roxas en representación del apelante.
D. Gabriel Pimentel en representación del apelado.

BRIONES, *M.:*

Alégase en la demanda lo siguiente:

(*a*) Que el demandado venía ocupando desde 1938, 1941 y 1942 tres accesorias de la propiedad del demandante, todas sitas en Manila, mediante un contrato verbal de arrendamiento sin plazo determinado, con los alquileres pagaderos a fin de cada mes; (*b*) que el demandado, sin conocimiento ni consentimiento del demandante, removió el tabique divisorio entre dos de las accesorias, causando por ello daños en la suma de ₱100; (*c*) que unos seis meses antes de la presentación de la demanda (abril 17, 1945) el demandante había estado requiriendo al demandado personalmente y por escrito para que desalojase las accesorias porque aquél las necesitaba para habitar en ellas con su familia y que, además, pagase los alquileres devengados, pero el demandado desatendió en absoluto el requerimiento; (*d*) así que el demandante interponía la presente acción para pedir una sentencia por desahucio y por los daños y alquileres debidos y que se debieron hasta la restitución completa de las fincas.

El Juzgado Municipal de Manila, ante quien se presentó originariamente la demanda, dictó sentencia a tenor de la misma. Elevado el asunto en grado de apelación ante el Juzgado de Primera Instancia, el demandado interpuso varias defensas, entre ellas la de que había pendiente entre las mismas partes otro asunto sobre los mismos motivos de acción y sobre las mismas accesorias—asunto promovido durante la invasión japonesa, el cual ya había comenzado a verse ante el mismo Juzgado de Primera Instancia de Manila. Sin embargo, este tribunal desestimó las defensas y confirmó la sentencia del juzgado municipal. De ahí la apelación que tenemos ante Nos.

La defensa de que al incoarse la presente acción estaba pendiente entre las mismas partes otro asunto de igual tenor está bien traída y fundamentada. El mismo Juzgado

a quo reconoce este hecho cuando en su sentencia establece las siguientes consideraciones:

"Es cierto que ha habido una anterior causa de desahucio entre las mismas partes y referente a las mismas accesorias y local aquí en cuestión y que dicha causa no ha terminado y el expediente correspondiente se ha destruído durante la batalla de Manila. Es nuestra opinión que el demandante tenía derecho a iniciar la presente causa, porque su demanda se funda en un motivo distinto del motivo de acción de su demanda en la anterior causa." (Expediente de Apelación, pág. 10.)

Por tanto, toda la cuestión que tenemos que determinar y resolver es si es verdad lo que dice S. S. el Juez sentenciador, a saber: que el presente asunto es diferente del anterior por ser distintos los motivos de acción de uno y otro. Consta en autos que en la vista del asunto que nos ocupa el abogado del demandado pidió se hiciera constar y se tomase conocimiento judicial del hecho de que ante el mismo Juzgado había pendiente entre las mismas partes otro asunto de la misma naturaleza, con igual motivo de acción y acerca del mismo objeto, esto es, las mismas accesorias. El abogado del demandante objetó al pedimento y solicitó que la referida manifestación se descartase. El Juzgado desestimó, sin embargo, la petición de descarte, y acto seguido hizo unos comentarios y observaciones que implicaban admisión y reconocimiento de la alegada pendencia de otro asunto idéntico entre las mismas partes. Una de las observaciones expresadas por S. S. es que había tratado de arreglar el asunto, pero no tuvo éxito en su empeño por desavenencias entre las partes y por las repetidas ausencias del demandado al llamarse a vista el asunto. (Trans. notas taquigráficas, págs. 2, 3.)

El tribunal *a quo* parece creer que se trata de dos diferentes asuntos nada más que porque ambos se refieren a dos diferentes períodos de tiempo. Evidentemente esto es un error. El factor tiempo aquí no puede tener el efecto de diferenciar un asunto de otro por la sencilla razón de que (1) tanto en lo que respecta al requerimiento para dar por terminado el arrendamiento como (2) en lo relativo al cobro de los alquileres objeto de mora, el primer asunto tenía necesariamente que cubrir todo período de tiempo ulterior hasta la completa restitución de las fincas arrendadas y el pago completo de los alquileres devengados; en otras palabras, hasta la terminación definitiva del asunto, originariamente o en grado de apelación, mediante la ejecución de la correspondiente sentencia, o el cumplimiento voluntario por el demandado de lo ordenado en ella. A menos que el primer asunto se hubiese terminado por virtud de cualquiera de los modos señalados en nuestra ley de procedimiento civil, el demandante no podía incoar una

nueva acción de desahucio contra el demandado so pretexto de un nuevo requerimiento, porque no sólo ello equivaldría a permitir la multiplicidad de pleitos, sino que podría dar lugar a vejaciones abrumándole a un inquilino con varias demandas de desahucio mediante diferentes y sucesivos requerimientos. En el presente caso ni siquiera se puede justificar la incoación del segundo pleito con la alegación de que el expediente del anterior se quemó con motivo de la tremenda conflagración en la batalla por la reconquista y liberación de Manila del yugo japonés, porque cabe un remedio y es la recomposición del expediente ya para proseguirlo, ya para sobreseerlo, si tal es la opción del demandante.

Nuestra conclusión, por tanto, es que, previo sobreseimiento del presente asunto, el anterior se debe reconstituir y continuar tramitándose hasta su terminación definitiva. Para simplificar y obviar procedimientos, los depósitos de alquileres hechos en este asunto se declaran válidos y se trasladarán al primer asunto, una vez reconstituído. Para todos estos efectos se ordena la devolución del expediente al Juzgado de origen. Sin expreso pronunciamiento en cuanto a las costas.

Moran, Pres., Parás, Jaranilla, Feria, y *Pablo, MM.*, están conformes.

Se revoca la sentencia; se devuelven los autos con intrucciones.

[CA–No. 601. March 22, 1946]

PETRA GATMAITAN, plaintiff and appellee, *vs.* MODESTO J. PASCUAL, defendant and appellant

PLEADING AND PRACTICE; ADMISSIBILITY OF SUPPLEMENTAL ANSWER FILED AFTER RENDITION OF DECISION; MOTION FOR NEW TRIAL; AFFIDAVITS OF MERIT.—The only remaining question raised on appeal is the admissibility of the supplemental answer filed by the appellant after the case was decided by the Court of First Instance, in conjunction with his motion for a new trial, wherein it is alleged that an easement has been established in favor of the appellant on that portion of land admittedly pertaining to the appellee. This is purely a question of law which we can, and hereby, decide now against the appellant, because the new allegation was not supported by affidavits of merit as required by section 2 of Rule of Court No. 37, and, not being in fact new matter, should have been set up in the answer and proved at the trial.

APPEAL from a judgment of the Court of First Instance of Bulacan. Gutierrez David, J.

The facts are stated in the opinion of the court.

Tablan & Pablo for appellant.
Rosendo J. Tansinsin for appellee.

RESOLUTION ON MOTION FOR RECONSIDERATION

PARÁS, *J.*:

On October 27, 1942, the Court of First Instance of Bulacan rendered a decision the dispositive part of which reads as follows:

"Por todo lo expuesto, el Juzgado falla el asunto condenando al demandado a restituír inmediatamente a la demandante la porción de terreno descrita en el segundo párrafo de la demanda y delimitada con lápiz rojo en el croquis, Exhíbit A, a pagar a la demandante la suma de ₱300 como gastos calculados para el terraplén del terreno en cuestión y mas la suma de ₱10 anuales desde el 1.° de enero de 1937 hasta la restitución de la posesión de la propiedad, y mas las costas del juicio."

The Court of Appeals affirmed said decision in *toto*. Leave was granted to the appellant to file a motion for reconsideration; but it is now contended that this cannot be done without a new trial because, in addition to the question of law, some facts are disputed and this court, taking the place of the Court of Appeals, will not be able to pass upon said motion without the oral evidence which had been lost or destroyed.

Upon a re-examination of the entire record, including that just received from the Court of First Instance of Bulacan, we find, however, that the brief for the appellant admits that the portion of land in litigation is really part and parcel of that belonging to the appellee. His statement is as follows:

"El 18 de septiembre de 1936 Petra Gatmaitan vendió una parcela de terreno de 59,015 m. c. por la suma de ₱3,300 a favor de Modesto Pascual. Éste tomó inmediatamente posesión de dicha parcela, pero, al hacerlo, llegó a incluír una porción de otro terreno de Petra Gatmaitan. Esta porción de terreno en cuestión constituye un saliente irregular incrustrada en el extremo sureste de la parcela vendida a Modesto Pascual entre las líneas 36, 37, 38, 39 y 40 de dicha parcela."

There is consequently no controversy between the parties as to the fundamental issue in this case. Moreover, the appellant's brief already quotes the pertinent testimony in his favor which, in our opinion, does not, and cannot, alter the decision of the trial court.

The only remaining question raised on appeal is the admissibility of the supplemental answer filed by the appellant after the case was decided by the Court of First Instance, in conjunction with his motion for a new trial, wherein it is alleged that an easement has been established in favor of the appellant on that portion of land admittedly pertaining to the appellee. This is purely a question of law which we can, and hereby, decide now against the appellant, because the new allegation was not supported by affidavits

of merit as required by section 2 of Rule of Court No. 37, and, not being in fact new matter, should have been set up in the answer and proved at the trial.

Setting aside our resolution of November 21, 1945, ordering the "holding of a new trial by the court of origin in the event that the evidence cannot be reconstituted," we hereby declare this case duly reconstituted for all legal purposes and subject to the conclusions hereinabove set forth. So ordered.

Moran, C. J., Ozaeta, Jaranilla, De Joya, Pablo, Perfecto, Hilado, and *Briones, JJ.*, concur.

FERIA, *J.*, concurring:

This is a motion for reconsideration filed by appellant of the decision of the Court of Appeals.

At first, in view of the destruction of all the records of cases pending in the Court of Appeals, we ordered the reconstitution of the record of this case upon the request of the appellant. But the original record having subsequently been forwarded to this Court from the Court of First Instance, we can, and do hereby, dispose of said motion for reconsideration in view of that record, without necessity of ordering a new trial.

The motion for reconsideration reiterates the questions raised in appellant's brief, to wit: The question of fact whether or not the evidence supports the decision of the Court of Appeals which affirms the conclusion of the Court of First Instance to the effect that, according to the evidence, appellees are the owners of the lot in question; and the question of law assigned in appellant's brief that the Court of First Instance erred in not allowing appellant's supplemental answer and motion for new trial filed in said Court.

As to the question of fact, it is evident that the conclusion of the lower court or Court of First Instance is supported by the evidence, for the appellant, in his statement of facts (first paragraph) and part of his testimony quoted in appellant's brief, admits that the lot in question belongs to appellee and was not included in the deed of sale of the lands sold by appellee to appellant. And in the same supplemental answer and motion for new trial filed in that court, appellant impliedly makes the same admission in contending that he has acquired an easement of aqueduct over said lot in favor of the lands he acquired from appellee, since a person can not claim such an easement over his own property.

The questions of law raised in the motion for reconsideration do not merit a serious consideration.

The lower court did not err in not admitting the supplemental answer, not because it is not supported by affidavits of merit or is not a new matter, but because it was filed after the rendition of the decision of the lower court; and, besides, it alleges facts which had occurred prior to the filing of the original pleading and not material to the facts therein alleged. The law does not require the filing of affidavits of merit in support of a supplemental answer, or that it should allege a new matter.

The Court of Appeals was right in not holding as erroneous the order of the lower court which denied the appellant's motion for new trial filed in said court and based on the three grounds provided in section 1, Rule 37, Rules of Court, not precisely because it is not supported by affidavits of merit (the first and second ground only, for the third ground does not require such affidavit), which the lower court had presumably taken into consideration in denying the motion, but because the granting or denying of said motion was a matter of discretion of the court below, and as such "can not be assigned as erroneous in the assignment of errors or be subject to review by the appellate court." While it is true that the provisions of the second paragraph of section 146 of Act No. 190 have not been incorporated in the new Rules of Court, the latter has not introduced any substantial change in this respect, for section 3 of Rule 37 provides that the court *may set aside* the judgment and grant a new trial, upon such terms as may be just, *or deny the motion.*

A resolution or decision of the court is said to be discretionary or a matter of discretion when there is no law or rule which serves as a guide for the court in deciding a question, and it is left to its discretion to decide it in one way or another. For that reason a Court of First Instance, in the exercise of its discretion, can not violate any rule or provision of law or commit any error, and consequently its resolution can not be assigned as erroneous and is not subject to revision or modification by the appellate or superior court. Only in case of abuse of discretion on the part of the lower court can the appellate court correct such abuse of discretion if raised on appeal.

If there is no abuse of discretion, instead of raising on appeal the denial of appellant's motion for new trial on the ground of newly discovered *material* evidence, appellant may reiterate or file it again with the appellate court under the provision of section 1 of Rule 55, if appellant is not satisfied with the lower court's resolution. And in case of fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against, and by reason of which such aggrieved party has probably

been impaired in his rights, if appellant's motion for new trial on that ground is denied by the Court of First Instance, and he can not assign on appeal abuse of discretion on the part of said court in denying his motion, he may resort to the relief provided in section 2 of Rule 38.

It would be superfluous for appellant to assign in his brief as erroneous the order of the court denying his motion for a new trial on the ground that the judgment is contrary to law or the evidence. Because these questions are or may now be raised on appeal irrespective of whether or not a motion for new trial on that ground has been filed and denied by the lower court. This formal motion for new trial is no longer necessary as a prerequisite in order that, on appeal, appellant may raise questions of fact (section 19, Rule 48).

Appellant's motion for reconsideration is therefore denied.

Resolution of November 21, 1945, set aside; case remanded for new trial.

[CA-No. 8977. March 22, 1946]

TORIBIO P. PEREZ, plaintiff and appellee, *vs.* SCOTTISH UNION AND NATIONAL INSURANCE CO., defendant. MIGUEL H. MITRE, appellant.

1. ATTORNEYS-AT-LAW; COMPENSATION; CONTRACT CONTROLLING.—A contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.
2. ID.; ID.; INCOME OR LENGTH OF PRACTICE, NOT TEST OF PROFESSIONAL ABILITY.—The income of a lawyer is not a safe criterion of his professional ability. Many very good lawyers earn but small incomes while lawyers of inferior ability may prosper financially. Neither is the length of time a lawyer has practiced a reliable measure of his ability; his competency must be judged by the character of his work.

APPEAL from a judgment of the Court of First Instance of Albay. Lesaca, J.

The facts are stated in the opinion of the court.

Nicodemus L. Dasig for appellant.

Bonto & Gutierrez Lora, Gregorio Sabater, Jesus Salazar, Alfredo S. Rebueno, Francisco Muñoz, and *Geronimo P. Vibal,* for appellee.

PARÁS, *J.:*

The plaintiff is seeking to recover (1) ₱6,000, as attorney's fees in a criminal case for arson against the defendant Miguel H. Mitre who, in a written contract (Exhibit D), had covenanted to pay the same out of the proceeds of a fire insurance policy (No. 5518308), for ₱12,000, is-

sued in his favor by the defendant Scottish Union and National Insurance Co., and (2) ₱1,485, unpaid balance of attorney's fees owing by the defendant Miguel H. Mitre in four other cases (CA–G. R. No. 6398; CA–G. R. No. 6499; civil case No. 3048, Court of First Instance of Sorsogon; and administrative case, Mitre *vs.* Arambulo). The defendant Miguel H. Mitre acknowledges the execution of (Exhibit D) and the fact that the plaintiff had rendered professional services, but it is alleged, at the same time, (*a*) that the stipulated fee in the case of arson (₱550) had been fully paid (Exhibit D) being a simulation conceived by the plaintiff and intended merely to bar all claims to the insurance proceeds arising from defendant's criminal liability; (*b*) that the stipulated fee in CA–G. R. No. 6398 and CA–G. R. No. 6499 was ₱100 each, of which a total of ₱100 had already been paid in said cases; (*c*) that civil case No. 3048 was not a litigation of the defendant Miguel H. Mitre who was included therein for being the husband of the principal defendant Maria Perez de Mitre; and (*d*) that the plaintiff undertook to handle the administrative case against Arambulo as part of the arson case.

The judgment of the Court of First Instance of Albay, from which only the defendant Miguel H. Mitre has appealed, is in favor of the plaintiff and orders the Scottish Union and National Insurance Co. to pay, out of the proceeds of policy No. 5518308, first, to the Collector of Internal Revenue the sum of ₱1,205.15, as sales tax due from the defendant Miguel H. Mitre, and, secondly, to the plaintiff the sum of ₱7,640.51, covering ₱6,000 (attorney's fees in the arson case) and ₱1,640.51 (unpaid attorney's fees in four other cases), with legal interest and costs. The plaintiff was absolved from the counterclaims of the defendants, Miguel H. Mitre and Scottish Union and National Insurance Co., for damages in the respective amounts of ₱500 and ₱1,000 alleged to have been suffered as a result of the institution of this suit.

In support of appellant's theory that (Exhibit D) was prepared merely to fool the insurance company and possible claimants of the proceeds that might be due under policy No. 5518308, it is argued that said contract was dated April 10, 1939, although in fact it was signed on August 26, 1939, when the plaintiff informed the appellant of his conviction by the trial court. Even admitting the verity of appellant's allegation of fact, it does not necessarily follow that the sense of the document was not as purported by its plain language. While third parties in whose fraud the alleged misrepresentation was made, might validly avail themselves thereof, the appellant certainly is not in

a parallel situation. We surmise that the appellant, in his anxiety to be exonerated and to pay his attorney's fees in the arson case, had voluntarily become a party to the alleged misrepresentation. At any rate, if plaintiff's reason for antedating (Exhibit D) was to show its execution prior to appellant's conviction, said purpose could well have been served by dating it August 26, 1939, because the decision of the trial court in the arson case was not promulgated until August 31, 1939.

Appellant's disavowal of (Exhibit D) is evidently an afterthought brought about by his acquittal in the Court of Appeals. If the plaintiff had really conspired with the appellant in the scheme to protect the insurance proceeds, the contract would have been couched in terms sufficient to cover the full face value of the policy (₱12,000) or every cent accruing thereunder. We have yet to look for an insurance company or a third person who would dare assail said contract after appellant's absolute right to the policy shall have been established.

Whether the plaintiff is entitled to the fee of ₱6,000 as provided in (Exhibit D), in compensation for his professional services in the arson case, is the more fundamental question before us. The first point that comes up in this connection is appellant's intimation that the plaintiff, in view of his relationship with appellant's wife, not only had volunteered to defend him gratuitously, but had insisted in doing so, plaintiff's idea being to gain popularity as a criminal lawyer, a circumstance which would help his candidacy for a seat in the House of Representatives; that, notwithstanding the fact that he had his lawyers in Manila and Sorsogon, the appellant accepted the offer. Several considerations, however, militate against the latter's pretensions. First, the alleged relationship, even if admitted, does not necessarily carry the inference that the plaintiff could be capable of making such gratuitous offer, much less insistence, for any lawyer will be devoid of dignity and pride who will do what is imputed to the plaintiff. Secondly, appellant's claim is inconsistent with his admission that he agreed to pay, as he in fact had paid, the plaintiff the fee of ₱550. Thirdly, the appellant had retained plaintiff's services even after his conviction in the lower court. This would have been the propitious opportunity for the appellant to give an end to plaintiff's alleged insistence to be in the arson case. His failure to do so engenders the implication that the contract (Exhibit D) was binding on him and that he continued to have confidence in plaintiff's ability. Fourthly, the appellant does not appear to be so ignorant as to be easily and blindly inveigled into accepting the services of a lawyer whose capacity he doubted, and into

signing an agreement which would deprive him of ₱6,000.

Exhibit D should be given its full force and effect. "A contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable." (Rules of Court, 127, section 22.) The arson case required several days of trial. The gravity of the situation confronted by the appellant after the rendition of the judgment of the Court of First Instance is shown by the fact that he was sentenced to undergo imprisonment for the period of from ten to twelve years and to pay an indemnity of ₱101,115. That the plaintiff had handled appellant's defense with competence and success cannot be gainsaid, it being enough to state that the appellant was acquitted in the Court of Appeals before which the plaintiff orally argued, in addition to a 78-page brief which he had filed therein. We are thus not prepared to rule that the amount of ₱6,000 is excessive or unjust, especially because said fee is in a sense contingent upon the acquittal of the appellant, since no insurance money (₱6,000 of which was ceded to the plaintiff under Exhibit D) was of course forthcoming if the fire which destroyed the insured property could be proven to have resulted from incendiarism for which the appellant was criminally liable.

We need not seriously consider the implication that the appellant wishes to bring out by mentioning the facts that the plaintiff was admitted to the bar in 1933, that he was a justice of the peace with a monthly salary of ₱157, that the highest fee ever previously collected by him was only ₱1,500, and that he had to borrow money from the Philippine National Bank and Saturnino Benito, a circumstance not indicative of a lucrative practice. "The income of a lawyer is not a safe criterion of his professional ability. Many very good lawyers earn but small incomes while lawyers of inferior ability may prosper financially. Neither is the length of time a lawyer has practiced a reliable measure of his ability; his competency must be judged by the character of his work." (Moran, Rules of Court, Vol. II, p. 669, citing Haussermann *vs.* Rahmeyer, 12 Phil., 350; Delgado *vs.* De la Rama, 43 Phil., 419; Panis *vs.* Yangco, 52 Phil., 499; Bachrach *vs.* Teal and Teal Motor Co., 53 Phil., 631; Ingersoll *vs.* Malabon Sugar Co., 53 Phil., 745; De Guzman *vs.* Visayan Rapid Transit Co., SC–G. R. No. 46396, September 30, 1939.)

The validity of Exhibit D having been upheld, appellant's claim that plaintiff's stipulated fee was only ₱550 which had already been paid, necessarily becomes untenable. We may add, however, in plaintiff's favor that judicial actions for the recovery of fees, unless righteous

and well founded and unless forced by an intolerable attitude assumed by clients, are seldom, if ever, resorted to, because they cannot fail to create the impression, however wrong it may be, that the lawyers instituting them are mercenary.

Upon the other hand, we are inclined to believe that the fees sought to be recovered for professional services in four other cases are not supported by a preponderance of the evidence. It was to be expected that, if any balance of said fees was outstanding, the same should have been included in the complaint, or made the subject matter of another case. Indeed, said fees were pleaded only in the reply filed by the plaintiff to appellant's answer, undoubtedly to ward off the weight of the payment alleged in said answer.

We are also of the opinion that the trial court erred in ordering the Scottish Union and National Insurance Co. to pay to the Collector of Internal Revenue the sum of ₱1,205.15 as sales tax. The latter has not filed any pleading whatsoever. Besides, there is no proof as to appellant's liability therefor. The latter's admission that a claim was presented by the Government against him for said amount, refers to the presentation of the claim and not to appellant's liability.

The appealed judgment will therefore be affirmed in so far as it sentences the appellant, Miguel H. Mitre, to pay to the plaintiff the sum of ₱6,000 as attorney's fees in the arson case, with legal interest from the date of the filing of the complaint, and orders the Scottish Union and National Insurance Co. to pay said amount to the plaintiff out of the proceeds of policy No. 5518308 accruing in favor of the appellant, Miguel H. Mitre. Said judgment is hereby reversed in all other respects, with costs against the appellant. So ordered.

Moran, C. J., Jaranilla, Feria, Pablo, and *Briones, JJ.,* concur.

Judgment modified.

[No. 49183. March 23, 1946]

SERGIA MENDOZA, petitioner, *vs.* MODESTO CASTILLO as Judge of First Instance of Batangas, and the spouses GAVINO GUICO and CIPRIANA MAGPANTAY, respondents.

JUDGMENTS; RELIEF FROM; ACCIDENT, MISTAKE OR EXCUSABLE NEGLIGENCE; CASE AT BAR.—It appears from the record that the instant respondents G. G. and C. M., aside from not having been served with copy of the lower court's order of September 22, 1943, directing "counsel for the defendants" to file his answer to the complaint, did not personally appear to answer said complaint in the *bona fide* belief that attorney M, who

had represented them, along with the other defendants, in the motion to dismiss would continue representing them in the case. That this was the conclusion arrived at by judge C is obvious. Far from considering that said judge, in granting relief to his co-respondents herein G. G. and C. M., from the effects of the lower court's order declaring said co-respondents in default and of the same court's judgment of December 25, 1943, acted without jurisdiction, as pretended by petitioner herein, we hold that it correctly applied the provisions of Rule 38, sections 2 and 3 with a view to administering substantial justice between the parties without depriving any of them of his day in court. If not actual fraud, the petition for relief and its supporting affidavit made out a good case of "accident, mistake, or excusable negligence."

ORIGINAL ACTION in the Supreme Court. *Certiorari.*

The facts are stated in the opinion of the court.

Pedro Pañganiban and *Gamboa & Enverga* for petitioner.

Meynardo M. Farol and *Placido C. Ramos* for respondents Guico and Magpantay.

No appearance for respondent Judge.

HILADO, *J.:*

By her petition for a writ of certiorari dated May 9, 1944, Sergia Mendoza seeks the annulment of the order of the Court of First Instance of Batangas, dated March 30, 1944, in civil case No. 38 of said court, and that the judgment of the said court in the same case, dated December 23, 1943, be declared final and binding, with such other relief as may be just and proper in the premises.

Without prejudice to the now well known opinion of the writer on the question of validity of judicial proceedings had in the courts of the so-called Republic of the Philippines during the Japanese occupation, this decision upon the merits of the instant case has been penned in deference to the view of the majority of the court in favor of such validity.

The facts necessary for the resolution of the questions raised by the aforesaid petition and the answer thereto of the respondents dated August 4, 1944, are as follows:

The Court of First Instance of Batangas rendered its judgment in said civil case No. 38 in favor of the therein plaintiff, now petitioner Sergia Mendoza, the dispositive part of which reads as follows:

"Wherefore, the Court renders judgment in favor of the plaintiff Sergia Mendoza ordering the defendants Jose Cantos and Martina Soriano to sell the land in question to the plaintiff for the sum of ₱1,200 and to execute the corresponding deed of sale, but if said land has really been sold to the defendants Gavino Guico and Cipriana Magpantay said sale is declared null and void; and condemning the defendants Jose Cantos and Martina Soriano to pay the plaintiff the amount of ₱250 by way of damages as well as to pay the costs of the suit."

The herein respondent spouses Gavino Guico and Cipriana Magpantay were the defendants of the same names in that civil case, the other defendants therein being Jose Cantos and Martina Soriano also named in the above quoted dispositive part of the judgment now sought to be annulled. Within sixty days following the date on which respondents Gavino Guico and Cipriana Magpantay learned of the said judgment of the Court of First Instance of Batangas against them, and within six months after that judgment was entered, they filed with said court a so-called motion for new trial supported by an affidavit, which was really a petition for relief from the said judgment under Rule 38, sections 2 and 3, alleging that it had been obtained through fraud. Of that motion, with its supporting affidavit, the adverse party, plaintiff therein and petitioner in this case, was duly served with copies and notified of the hearing thereon, said adverse party having filed an opposition thereto. In relation to said motion and opposition, it appears that under date of July 1, 1943, Atty. Pedro P. Muñoz appeared in said civil case No. 38 in behalf of all the defendants therein, among them the spouses Gavino Guico and Cipriana Magpantay, and filed a motion to dismiss (Annex 3 of respondents' answer).

Under date of September 22, 1943, the Court of First Instance of Batangas entered an order ruling against said motion to dismiss and directing "counsel for the defendants" to file their answer to the complaint within five days from receipt of a copy of said order. Under the same date the special deputy clerk of court certified that a copy of said order had been sent by registered mail to Atty. Pedro P. Muñoz and another copy by ordinary mail to opposing counsel. *No copy of said order was served directly on the instant respondents Gavino Guico and Cipriana Magpantay,* who were among the defendants in that case for whom Attorney Muñoz had previously appeared and filed the motion to dismiss already alluded to. The so-called motion for new trial which, as above stated, was really a petition for relief under Rule 38, sections 2 and 3, was sworn to by the said spouses Guico and Magpantay before the justice of the peace of Batangas, Batangas.

The Court of First Instance of Batangas at first denied the said motion of Gavino Guico and Cipriana Magpantay by an order dated March 17, 1944. But, subsequently, upon motion for reconsideration dated March 22, 1944, filed by the said respondents, as defendants in the case before the lower court, the same court, Judge Modesto Castillo presiding, by order dated March 30, 1944, set aside its order of March 17, 1944, and vacated the court's judg-

ment of December 23, 1943. The instant petitioner filed a motion for reconsideration of said order of March 30, 1944, but it was denied by Judge Castillo.

It appears from the record that the instant respondents Gavino Guico and Cipriana Magpantay, aside from not having been served with copy of the lower court's order of September 22, 1943, directing "counsel for the defendants" to file his answer to the complaint, did not personally appear to answer said complaint in the *bona fide* belief that Attorney Muñoz, who had represented them, along with the other defendants, in the motion to dismiss would continue representing them in the case. That this was the conclusion arrived at by Judge Castillo is obvious. Far from considering that said Judge, in granting relief to his co-respondents herein Gavino Guico and Cipriana Magpantay, from the effects of the lower court's order declaring said co-respondents in default and of the same court's judgment of December 23, 1943, acted without jurisdiction, as pretended by petitioner herein, we hold that it correctly applied the provisions of Rule 38, sections 2 and 3 with a view to administering substantial justice between the parties without depriving any of them of his day in court. If not actual fraud, the petition for relief and its supporting affidavit made out a good case of "accident, mistake, or excusable negligence."

Wherefore, the petition is denied, with costs against petitioner. So ordered.

Moran, C. J., Ozaeta, Parás, Jaranilla, Feria, De Joya, Pablo, Perfecto, Bengzon, and *Briones, JJ.*, concur.

Petition denied.

[No. L–260. March 25, 1946]

FELIPE SAAVEDRA, petitioner, *vs.* THE HONORABLE POTENCIANO PECSON, Judge of the Court of First Instance of Zamboanga, respondent.

1. JURISDICTION; MUNICIPAL COURTS.—Plaintiff sued defendant to recover an automobile, valued at ₱450, which the Japanese forces seized from plaintiff during enemy occupation, later was used by the PCAU and, lastly, was sold by an American enlisted man to defendant. *Held:* The municipal court has jurisdiction to try the case.
2. ID.; COURTS OF FIRST INSTANCE.—The municipal court dismissed the complaint on the erroneous assumption that it has no jurisdiction to try the case. It appearing that the dismissal involves a question of law, the court of first instance has jurisdiction on appeal to review the ruling and may affirm or reverse it and, in case of reversal, to remand the case for further proceedings, in pursuance of section 10 of Rule 40.

3. ILLEGAL SEIZURE BY THE JAPANESE.—The fact that an automobile, owned by a civilian private citizen, has been seized by the Japanese forces during enemy occupation, does not change the nature, character, and status of the automobile as a private property, nor does it make it an enemy property.

ORIGINAL ACTION in the Supreme Court. *Certiorari.*

The facts are stated in the opinion of the court.

Atilano & Atilano for petitioner.
Respondent Judge in his own behalf.

PERFECTO, *J.:*

On December 18, 1945, Valeriano Turija filed in the Municipal Court of Zamboanga a complaint for the recovery of an automobile valued at ₱450 against petitioner Felipe Saavedra, who acquired the same from Arthur D. Walker, an American enlisted man, said car belonging to the plaintiff from whom it was seized and appropriated by the Japanese forces during the enemy occupation and, after the liberation, had been in the possession and control of the PCAU before its transfer by Arthur D. Walker to petitioner.

Petitioner filed a motion to dimiss the complaint on the ground that the municipal court has no jurisdiction over the subject matter of the action, for the reason that the car has lost its character as private property to take on the status of enemy state property and, therefore, the claim and adjudication of the same should be made in and by the Office of the Custodian of Enemy Property established by the United States Government in Zamboanga. On January 2, 1945, municipal court, declaring itself without jurisdiction, ordered the dismissal of the case. On January 5, 1946, the plaintiff appealed.

After both parties were given ample opportunity to present their oral arguments in support of their respective contentions on the question of the jurisdiction of the municipal court, the Honorable Potenciano Pecson, Judge of the Court of First Instance of Zamboanga, issued on January 7, 1946, an order reversing the order of dismissal of the municipal court, declaring it with jurisdiction to try the same, and remanding the same for further proceedings, without costs. On January 9, 1946, petitioner moved for reconsideration of said order of January 7, but the motion was denied on January 11.

Now petitioner comes to us to seek the annulment of the order of the respondent judge dated January 7, 1946, as having been issued in excess of his jurisdiction.

We do not find any merit in petitioner's contention.

It appearing that the complaint for the recovery of the automobile in question has been disposed of by the Mu-

nicipal Court of Zamboanga upon a question of law and not upon a trial on the merits, the respondent judge has jurisdiction to issue the order dated January 7, 1946, in accordance with section 10 of Rule 40 of the Rules of Court, which reads as follows:

"SEC. 10. *Appellate powers of Courts of First Instance where action not tried on its merits by inferior courts.*—Where the action has been disposed of by an inferior court upon a question of law and not after a valid trial upon the merits, the Court of First Instance shall on appeal review the ruling of the inferior court and may affirm or reverse it, as the case may be. In case of reversal, the case shall be remanded for further proceedings."

Whether respondent acted correctly or not in issuing said order, the proper remedy for petitioner would be by appeal. But in the instant case, it appears that an appeal against the order would be futile because the order is well-taken as the municipal court, without any shadow of doubt, has jurisdiction to decide the litigation on the merits, it appearing that the value of the litigated personal property is within the range of the concurrent jurisdiction between a court of first instance and a municipal court.

Petitioner's contention that, because the property had been appropriated by the Japanese forces during enemy occupation, the automobile has lost its character as private property to take on the status of enemy state property, lacks merit. The illegal seizure made by the Japanese could not, and cannot, change the nature, character, and status of a property legally belonging to a civilian private citizen. Petitioner who is in possession of the automobile in question appears also to be a private citizen, residing in the district of Tetuan, Zamboanga City. The litigation is, therefore, between two private citizens, both residing within the territorial jurisdiction of the municipal court, and there is nothing to show that the automobile is not within the jurisdiction of said court.

Petition is dismissed, with costs to be taxed against petitioner.

Moran, C. J., Ozaeta, Parás, Jaranilla, Feria, De Joya, Pablo, Hilado, Bengzon, and *Briones, JJ.*, concur.

Petition dismissed.

[CA–No. 8075. March 25, 1946]

TRINIDAD NEYRA, plaintiff and appellant, *vs.* ENCARNACION NEYRA, defendant and appellee

1. WILLS; TESTAMENTARY CAPACITY; INSOMNIA, TUBERCULOSIS, DIABETES, NOT SUFFICIENT TO DESTROY MENTAL CAPACITY.—Insomnia, in spite of the testimony of two doctors, who testified for

the opponents to the probate of a will, to the effect that it tended to destroy mental capacity, was held not to affect the full possession of the mental faculties deemed necessary and sufficient for its execution (Caguioa *vs.* Calderon, 20 Phil., 400.) The testatrix was held to have been *compos mentis*, in spite of the physician's testimony to the contrary, to the effect that she was very weak, being in the third or last stage of tuberculosis. (Yap Tua *vs.* Yap Ca Kuan, 27 Phil., 579.) The testimony of the attending physician that the deceased was suffering from diabetes and had been in a comatose condition for several days, prior to his death, was held not sufficient to establish testamentary incapacity, in view of the positive statement of several credible witnesses that he was conscious and able to understand what was said to him and to communicate his desires. (Samson *vs.* Corrales Tan Quintin, 44 Phil., 573.)

2. ID.; ID.; OLD AGE OR ILL HEALTH INSUFFICIENT TO INVALIDATE WILL.—Where the mind of the testator is in perfectly sound condition, neither old age, nor ill health, nor the fact that somebody had to guide his hand in order that he might sign, is sufficient to invalidate his will.

3. ID.; ID.; EVIDENCE OF SOUND MIND.—Where it appears that a *few hours* and also a few days after the execution of the will, the testator intelligently and intelligibly conversed with other persons, although lying down and unable to move or stand up unassisted, but could still effect the sale of property belonging to him, these circumstances show that the testator was in a perfectly sound mental condition at the time of the execution of the will.

4. ID.; ID.; SLEEPING SICKNESS (ADDISON'S DISEASE) DOES NOT IMPAIR MENTAL FACULTIES.—The mental faculties of persons suffering from Addison's disease, like the testatrix in this case, remain unimpaired, partly due to the fact that, on account of the sleep they enjoy, they necessarily receive the benefit of physical and mental rest. And that like patients suffering from tuberculosis, insomnia or diabetes, they preserve their mental faculties until the moments of their death.

5. ID.; SIGNING BY THUMBMARK; PRESENCE OF ATTESTING WITNESSES: TEST OF.—The contention that the attesting witnesses were not present, at the time E. N. thumb marked the agreement and will in question, on her bed, in the *sala* of the house, as they were allegedly in the *caida*, is untenable. It has been fully shown that said witnesses were present, at the time of the signing and execution of the agreement and will in question, in the *sala*, where the testatrix was lying on her bed. The true test is not whether they actually saw each other, at the time of the signing of the documents, but whether they might have seen each other sign, had they chosen to do so; and the attesting witnesses actually saw it all in this case. (Jaboneta *vs.* Bustillo, 5 Phil.. 541.) And the thumb mark placed by the testatrix on the agreement and will in question is equivalent to her signature. (Yap Tua *vs.* Yap Ca Kuan, *supra.*)

APPEAL from a decision of the Court of Appeals of November 23, 1942.

The facts are stated in the opinion of the court.

Alejandro M. Panis for appellant.
Lucio Javillonar for appellee.

DE JOYA, *J.:*

On October 25, 1939, Trinidad Neyra filed a complaint against her sister, Encarnacion Neyra, in the Court of First Instance of the City of Manila, for the recovery of one-half (½) of the property mentioned and described therein, which had been left by their deceased father, Severo Neyra, and which had been previously divided equally between the two extrajudicially, demanding at the same time one-half (½) of the rents collected on the said property by the defendant Encarnacion Neyra.

The defendant filed an answer admitting that the property mentioned and described therein was community property, and at the same time set up counterclaims amounting to over ₱1,000, for money spent, during the last illness of their father, and for money loaned to the plaintiff.

After the trial of the case, the court found that the plaintiff was really entitled to one-half (½) of the said property, adjudicating the same to her, but at the same time ordered said plaintiff to pay to the defendant the sum of ₱727.77, plus interests, by virtue of said counterclaims.

Plaintiff Trinidad Neyra appealed from the said decision, to the Court of Appeals for Manila, alleging several errors, attacking the execution and validity of said agreement; and on November 10, 1942, said appeal was dismissed, pursuant to an agreement or compromise entered into by the parties, as shown by the corresponding document, dated November 3, 1942, which was filed in the case the following day, November 4, 1942.

In the meanwhile, Encarnacion Neyra, who had been sickly for about two years, unexpectedly died, on November 4, 1942, at the age of 48, allegedly from heart attack, as a consequence of Addison's disease from which, it was claimed, she had been suffering for sometime.

In view of the decision of the Court of Appeals, dated November 10, 1942, dismissing the appeal, by virtue of said agreement or compromise, Atty. Lucio Javillonar, claiming to represent Encarnacion Neyra, who had died since November 4, 1942, and other relatives of hers, filed a petition, dated November 23, 1942, asking for the reconsideration of said decision of the Court of Appeals, dismissing the appeal, claiming that the alleged compromise or agreement, dated November 3, 1942, could not have been understood by Encarnacion Neyra, as she was already then at the threshhold of death, and that as a matter of fact she died the following day; and that if it had been signed at all by said Encarnacion Neyra, her thumb mark appearing on said document must have been affixed thereto by Trinidad Neyra's attorney, against Encarnacion's will; and

that the court had no more jurisdiction over the case, when the alleged agreement was filed on November 4, 1942, at the instance of Trinidad Neyra, as Encarnacion was already dead at the time.

The principal question to be decided, in connection with said petition for reconsideration, is whether or not said compromise or agreement had been legally executed and signed by Encarnacion Neyra, on November 3, 1942. Trinidad Neyra maintains the affirmative.

The voluminous evidence, testimonial and documentary, adduced by the parties, in this case, has fully established the following facts:

That Don Severo Neyra died intestate in the City of Manila, on May 6, 1938, leaving certain properties and two children, by his first marriage, named Encarnacion Neyra and Trinidad Neyra, and other children by his second marriage; that after the death of Don Severo Neyra, the two sisters, Encarnacion Neyra and Trinidad Neyra, had serious misunderstandings, in connection with the properties left by their deceased father, and so serious were their dissensions that, after March 31, 1939, they had two litigations in the Court of First Instance of Manila, concerning said properties. In the first case, filed on March 31, 1939, Trinidad Neyra and others demanded from Encarnacion Neyra and others the annulment of the sale of the property located at No. 366 Raon Street, Manila, which was finally decided in favor of the defendants, in the Court of First Instance, and in the Court of Appeals, on December 21, 1943 (G. R. No. 8162); and the second is the instant case.

That Encarnacion Neyra, who had remained single; and who had no longer any ascendants, executed a will on September 14, 1939, marked (Exhibit 16), disposing of her properties in favor of the "Congregación de Religiosas de la Virgen María" and her other relatives, named Teodora Neyra, Pilar de Guzman and Maria Jacobo Vda. de Blanco, making no provision whatsoever in said will, in favor of her only sister of the whole blood, Trinidad Neyra, who had become her bitter enemy; that when the said will was brought to the attention of the authorities of said Congregation, after due deliberation and consideration, said religious organization declined the bounty offered by Encarnacion Neyra, and said decision of the Congregation was duly communicated to her; that in order to overcome the difficulties encountered by said religious organization in not accepting the generosity of Encarnacion Neyra, the latter decided to make a new will, and for that purpose, about one week before her death, sent for Atty. Ricardo Sikat, and gave him instructions for the preparation of a *new*

will; that Atty. Sikat, instead of preparing a new will, merely prepared a draft of a codicil, amending said will, dated September 14, 1939, again naming said religious organization, among others, as beneficiary, and said draft of a codicil was also forwarded to the authorities of said religious organization, for their consideration and acceptance; but it was also rejected.

In the meanwhile, Encarnacion Neyra had become seriously ill, suffering from Addison's disease, and on October 31, 1942, she sent for her religious adviser and confessor, Mons. Vicente Fernandez of the Quiapo Church to make confession, after which she requested that holy mass be celebrated in her house at No. 366 Raon Street, City of Manila, so that she might take holy communion; that Mons. Fernandez caused the necessary arrangements to be made, and, as a matter of fact, on November 1, 1942, holy mass was solemnized in her house by Father Teodoro Garcia, also of the Quiapo Church, on which occasion, Encarnacion Neyra, who remained in bed, took holy communion; that after the mass, Father Garcia talked to Encarnacion Neyra and advised reconciliation between the two sisters, Encarnacion and Trinidad Neyra. Encarnacion accepted said advise and, at about noon of the same day (November 1, 1942), sent Eustaquio Mendoza to fetch her sister Trinidad, who came at about 2:30 o'clock that same afternoon; that the two sisters greeted each other in a most affectionate manner, and became reconciled and the two had a long and cordial conversation, in the course of which they also talked about the properties left by their father and their litigations which had reached the Court of Appeals for the City of Manila, the instant case being the second, and they agreed to have the latter dismissed, on the condition that the property involved therein should be given exclusively to Trinidad Neyra, that the latter should waive her share in the rents of said property collected by Encarnacion, and that Trinidad had no more indebtedness to Encarnacion. They also agreed to send for Atty. Alejandro M. Panis, to prepare the necessary document embodying the said agreement, but Attorney Panis could come only in the afternoon of the following day, November 2, 1942, when Encarnacion gave him instructions for the preparation of the document embodying their agreement, and other instructions for the preparation of her last will and testament; that Attorney Panis prepared said document of compromise as well as the new will and testament, naming Trinidad Neyra and Eustaquio Mendoza beneficiaries therein, pursuant to Encarnacion's express instructions, and the two documents were prepared, in duplicate, and were ready for signature, since the morn-

ing of November 3, 1942; that in the afternoon of that day, November 3, 1942, Attorney Panis read said document of compromise and last will and testament to Encarnacion Neyra, slowly and in a loud voice, in the presence of Father Teodoro Garcia, Dr. Moises B. Abad, Dr. Eladio Aldecoa, Trinidad Neyra, and others, after which he asked her if their terms were in accordance with her wishes, or if she wanted any change made in said documents; that Encarnacion Neyra did not suggest any change, and asked for the pad and the two documents, and, with the help of a son of Trinidad, placed her thumb mark at the foot of each one of the two documents, in duplicate, on her bed in the *sala,* in the presence of the attesting witnesses, Dr. Moises B. Abad, Dr. Eladio R. Aldecoa and Atty. Alejandro M. Panis, after which said witnesses signed at the foot of the will, in the presence of Encarnacion Neyra, and of each other. The agreement was also signed by Trinidad Neyra, as party, and by Dr. M. B. Abad and Eustaquio Mendoza, a protegé, as witnesses.

Father Teodoro Garcia was also present at the signing of the two documents, at the request of Encarnacion Neyra.

The foregoing facts have been established by the witnesses presented by Trinidad Neyra, who are all trustworthy men, and who had absolutely no interest in the final outcome of this case. Two of them are ministers of the Gospel, while three of the attesting witnesses are professional men of irreproachable character, who had known and seen and actually talked to the testatrix.

Petitioner Teodora Neyra, half sister of Encarnacion, and her *young* daughter Ceferina de la Cruz, and Presentacion Blanco, daughter of petitioner Maria Jacobo Vda. de Blanco, substantially corroborated the testimony of the witnesses presented by Trinidad Neyra, with reference to the signing of documents, in the bedroom of Encarnacion Neyra, in the afternoon of November 3, 1942.

Teodora Neyra, Presentacion Blanco and Ceferina de la Cruz testified, however, that when the thumb mark of Encarnacion Neyra was affixed to the agreement in question, dated November 3, 1942, she was sleeping on her bed in the *sala;* and that the attesting witnesses were not present, as they were in the *caida.*

But Ceferina de la Cruz also stated that the attesting witnesses signed the documents thumb marked by Encarnacion Neyra, in the *sala* near her bed, thus contradicting herself and Teodora Neyra and Presentacion Blanco.

Strange to say, Teodora Neyra, Presentacion Blanco and Ceferina de la Cruz also testified that Encarnacion Neyra's thumb mark was affixed to the will, only in the morning of November 4, 1942, by Trinidad Neyra and one Ildefonso del Barrio, when Encarnacion was already dead.

The testimony of Dr. Dionisio Parulan, alleged medical expert, as to the nature and effects of Addison's disease, is absolutely unreliable. He had never seen or talked to the testatrix Encarnacion Neyra.

According to medical authorities, persons suffering from Addison's disease often live as long as ten (10) years, while others die after a few weeks only, and that as the disease progresses, asthenia sets in, and from 80 per cent to 90 per cent of the patients develop tuberculosis, and complications of the heart also appear. (Cecil, Textbook of Medicine, 3rd ed., 1935, pp. 1250–1253; McCrae, Osler's Modern Medicine, 3rd ed., Vol. V. pp. 272–279.)

And it has been conclusively shown that Encarnacion Neyra died on November 4, 1942, due to a heart attack, at the age of 48, after an illness of about two (2) years.

In connection with mental capacity, in several cases, this Court has considered the testimony of witnesses, who had known and talked to the testators, more trusthworthy than the testimony of alleged medical experts.

Insomnia, in spite of the testimony of two doctors, who testified for the opponents to the probate of a will, to the effect that it tended to destroy mental capacity, was held not to affect the full possession of the mental faculties deemed necessary and sufficient for its execution. (Caguioa *vs.* Calderon, 20 Phil., 400.) The testatrix was held to have been *compos mentis*, in spite of the physician's testimony to the contrary, to the effect that she was very weak, being in the third or last stage of tuberculosis. (Yap Tua *vs.* Yap Ca Kuan, 27 Phil., 579.) The testimony of the attending physician that the deceased was suffering from diabetes and had been in a comatose condition for several days, prior to his death, was held not sufficient to establish testamentary incapacity, in view of the positive statement of several credible witnesses that he was conscious and able to understand what was said to him and to communicate his desires. (Samson *vs.* Corrales Tan Quintin, 44 Phil., 573.) Where the mind of the testator is in perfectly sound condition, neither old age, nor ill health, nor the fact that somebody had to guide his hand in order that he might sign, is sufficient to invalidate his will. (Amata *vs.* Tablizo, 48 Phil., 485.)

Where it appears that *a few hours* and also a few days after the execution of the will, the testator intelligently and intelligibly conversed with other persons, although lying down and unable to move or stand up unassisted, but could still effect the sale of property belonging to him, these circumstances show that the testator was in a perfectly sound mental condition at the time of the execution of the will. (Amata *vs.* Tablizo, 48 Phil., 485.)

Presentacion Blanco, in the course of her cross-examination, frankly admitted that, in the morning and also at about 6 o'clock in the afternoon of November 3, 1942, Encarnacion Neyra talked to her and that they understood each other clearly, thus showing that the testatrix was really of sound mind, at the time of signing and execution of the agreement and will in question.

It may, therefore, be reasonably concluded that the mental faculties of persons suffering from Addison's disease, like the testatrix in this case, remain unimpaired, partly due to the fact that, on account of the sleep they enjoy, they necessarily receive the benefit of physical and mental rest. And that like patients suffering from tuberculosis, insomnia or diabetes, they preserve their mental faculties until the moments of their death.

Judging by the authorities above cited, the logical conclusion is that Encarnacion Neyra was of sound mind and possessed the necessary testamentary and mental capacity, at the time of the execution of the agreement and will, dated November 3, 1942.

The contention that the attesting witnesses were not present, at the time Encarnacion Neyra thumb marked the agreement and will in question, on her bed, in the *sala* of the house, as they were allegedly in the *caida*, is untenable. It has been fully shown that said witnesses were present, at the time of the signing and execution of the agreement and will in question, in the *sala*, where the testatrix was lying on her bed. The true test is not whether they actually saw each other, at the time of the signing of the documents, but whether they might have seen each other sign, had they chosen to do so; and the attesting witnesses actually saw it all in this case. (Jaboneta *vs.* Bustillo, 5 Phil., 541). And the thumb mark placed by the testatrix on the agreement and will in question is equivalent to her signature. (Yap Tua *vs.* Yap Ca Kuan, 27 Phil., 579).

Teodora Neyra and her principal witnesses are all interested parties, as they are children of legatees named in the will, dated September 14, 1939, but eliminated from the will, dated November 3, 1942.

Furthermore, the testimony of Teodora Neyra and her witnesses, to the effect that there could have been no reconciliation between the two sisters, and that the thumb mark of Encarnacion Neyra was affixed to the document embodying the agreement, while she was sleeping, on November 3, 1942, in their presence; and that her thumb mark was affixed to the will in question, when she was already dead, in the morning of November 4, 1942, within their view, is absolutely devoid of any semblance of truth. Said testimony is contrary to common sense. It violates all

sense of proportion. Teodora Neyra and her witnesses could not have told the truth; they have testified to deliberate falsehoods; and they are, therefore, absolutely unworthy of belief. And to the evidence of the petitioners is completely applicable the legal aphorism—*falsus in uno, falsus in omnibus.* (Gonzales *vs.* Mauricio, 53 Phil., 728, 735).

To show the alleged improbability of reconciliation, and the execution of the two documents, dated November 3, 1942, petitioners have erroneously placed great emphasis on the fact that, up to October 31, 1942, the two sisters Encarnacion and Trinidad Neyra were bitter enemies. They were banking evidently on the common belief that the hatred of relatives is the most violent. Terrible indeed are the feuds of relatives and difficult the reconciliation; and yet not impossible. They had forgotten that Encarnacion Neyra was a religious woman instructed in the ancient virtues of Christian faith, and hope and charity, and that to forgive is a divine attribute. They had also forgotten that there could be no more sublime love than that embalmed in tears, as in the case of a reconciliation.

It was most natural that there should have been reconciliation between the two sisters, Encarnacion and Trinidad Neyra, as the latter is the nearest relative of the former, her only sister of the whole blood. The approach of imminent death must have evoked in her the tenderest recollections of family life. And believing perhaps that her little triumphs had not always brought her happiness, and that she had not always been just to her sister, who had been demanding insistently what was her due, Encarnacion finally decided upon reconciliation, as she did not want to go to her eternal rest, with hatred in her heart or wrath upon her head. It was, therefore, most logical that Encarnacion should make Trinidad the beneficiary of her generosity, under her last will and testament, and end all her troubles with her, by executing said agreement, and thus depart in perfect peace from the scenes of her earthly labors.

It having been shown that the said compromise or agreement had been legally signed and executed by Encarnacion Neyra on November 3, 1942, in the presence of credible and trustworthy witnesses, and that she was *compos mentis* and possessed the necessary testamentary and mental capacity at the time; the petition for reconsideration filed by Atty. Lucio Javillonar, on November 23, 1942, on behalf of a client, Encarnacion Neyra, who had been dead since November 4, 1942, and some of her relatives, who have appeared, in accordance with the provisions of section 17 of Rule 3 of the Rules of Court, is hereby *denied;* and the de-

cision of the Court of Appeals for Manila, dated November 10, 1942, dismissing the appeal, is hereby *re-affirmed,* without costs. So ordered.

Ozaeta, Perfecto, Hilado, and *Bengzon, JJ.,* concur.

Petition denied; decision of Court of Appeals of November 10, 1942, re-affirmed.

[No. 49126. March 25, 1946]

E. T. YU CHENGCO, plaintiff and appellant, *vs.* YAP ENG CHONG, defendant and appellee

JUDGMENTS; EJECTMENT; MODIFICATION OF FINAL AND EXECUTORY JUDGMENT; FORCE AND EFFECT OF JUDGMENT OF COMMITTEE ON HOUSE RENTALS OR CITY MAYOR.—The trial court clearly erred in modifying its judgment after it had become final and executory. It also erred in subordinating its judgment to that of the so-called committee on house rentals and the City Mayor, who were not empowered by law to review or modify the judgment of a competent court. It is unnecessary to elaborate on the powers of the committee on house rentals created by Executive Order No. 117, that being now a defunct entity. Suffice it to say that whatever power it might legitimately have had to fix the rentals could not be exercised after the lease had been declared terminated by a competent court with a judgment of ouster.

APPEAL from a judgment of the Court of First Instance of Manila. Jugo, J.

The facts are stated in the opinion of the court.

Sycip & Quisumbing for appellant.
Teofilo Mendoza for appellee.

OZAETA, *J.:*

On February 27, 1943, judgment was rendered by the Court of First Instance of Manila ordering the defendant to vacate the premises located at 763 Aguilar, Binondo, Manila, to pay to the plaintiff the sum of ₱68 as back rentals and the further sum of ₱34 a month from February 1, 1943, up to the time he vacates the premises, with the legal rate of interest, and the costs. The defendant did not appeal from said judgment, but after being notified thereof he informed the court that he had applied to the committee on house rentals created by Executive Order No. 117 of the Philippine Executive Commission for a reduction of the rent and prayed the court that the execution of its judgment be suspended in the meantime. The court acceded to the suspension of the execution over the objection of the plaintiff. More than five months later, that is to say, on July 29, 1943, the committee on house rentals recommended to the Mayor, and the latter approved the re-

commendation, to reduce the rent of the premisse in question from ₱34 to ₱21.25 a month, the latter amount being 50 per cent of the pre-war rent. After being informed of that decision of the City Mayor the trial court, on November 22, 1943, modified its judgment of February 27, 1943, by reducing the rent from ₱34 to ₱21.25 a month "effective March 1, 1943, in accordance with the decision of the Mayor and the committee on house rentals" and by revoking the judgment of ouster, saying that "the defendant may continue occupying the premises in question by paying said amount." From that amendatory order the plaintiff appealed to this Court.

We find the appeal meritorious. The trial court clearly erred in modifying its judgment after it had become final and executory. It also erred in subordinating its judgment to that of the so-called committee on house rentals and the City Mayor, who were not empowered by law to review or modify the judgment of a competent court. In a similar case the same trial judge refused to execute his judgment pending the decision of the committee on house rentals, and the Supreme Court required him by mandamus to proceed with the execution. (Carlos *vs.* Jugo, G. R. No. 48998.) We deem it unnecessary to elaborate on the powers of the committee on house rentals created by Executive Order No. 117, that being now a defunct entity. Suffice it to say that whatever power it might legitimately have had to fix the rentals could not be exercised after the lease had been declared terminated by a competent court with a judgment of ouster.

Wherefore, the order of November 22, 1943, is hereby revoked and the original decision of the trial court, dated February 27, 1943, is hereby reinstated, with costs against the appellee.

De Joya, Perfecto, Hilado, and *Bengzon, JJ.,* concur.

Order of November 22, 1943, revoked; decision of February 27, 1943, reinstated.

[CA–No. 15. March 26, 1946]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* JACOB TANI Y TANI, defendant and appellant

JUDGMENTS; PUNITIVE SENTENCE FOR ILLEGAL POSSESSION OF FIREARMS UNDER EXECUTIVE ORDER NO. 226 OF THE CHAIRMAN OF THE PHILIPPINE EXECUTIVE COMMISSION; VALIDITY.—The punitive sentence imposed for the crime of illegal possession under Executive Order No. 226 of the Chairman of the Executive Commission is one of political complexion as defined in Alcantara *vs.* Director of Prisons (G. R. No. L–6, 42 Off. Gaz., 480), and, therefore, although good and valid during the occupation of the Philippines by the Japanese forces, ceased to be

so upon the reoccupation of these Islands and the restoration therein of the Commonwealth Government. (Co Kim Cham *vs.* Valdez Tan Keh, G. R. No. L–5, 41 Off. Gaz., 779, and Peralta *vs.* Director of Prisons, G. R. No. L–49, 42 Off. Gaz., 198).

APPEAL from a judgment of the Court of First Instance of Sorsogon. Amador, J.

The facts are stated in the opinion of the court.

Federico D. Jimenez for appellant.
Acting Assistant Solicitor-General Barcelona for appellee.

FERIA, *J.:*

Appellant Jacob Tani y Tani was accused and convicted on March 30, 1944, of the crime of illegal possession of firearms committed on or about February 12, 1944, in the municipality of Sorsogon, Sorsogon, and was sentenced to suffer the minimum penalty of six (6) years and one (1) day of imprisonment, to pay a fine of two hundred pesos (₱200), with subsidiary imprisonment in case of insolvency, and to pay the costs. The court also ordered the confiscation of the revolver and six rounds of ammunition illegally possessed.

The information and conviction was based on the violation of Executive Order No. 226 of the Chairman of the Philippine Executive Commission of October 12, 1943, duly approved by the Director General of the Japanese Military Administration on October 11, 1943. Section 27 of said Executive Order provides:

"*Unlawful possession.*—Any person who manufactures or possesses any firearms, parts of firearms, or ammunition therefor, in violation of any provision of this Order, shall upon conviction by a Court of competent jurisdiction, be punished by imprisonment for a period not less than six years and not more than twelve years and a fine not exceeding two thousand pesos. A conviction under this section shall carry with it the forfeiture of the prohibited article or articles to the Government, and shall be without prejudice to the punishment of the offender under Military laws."

Although not raised in the briefs because they were filed during the Japanese régime, the only question we have to determine in this case is the validity of the punitive sentence imposed upon the appellant after the reoccupation or liberation of the Philippine Islands.

In the case of Co Kim Cham *vs.* Valdez Tan Keh (G. R. No. L–5, 41 Off. Gaz., 779), promulgated on September 17, 1945 and in the case of Peralta *vs.* Director of Prisons (G. R. No. L–49, 42 Off. Gaz., 198), promulgated on November 12, 1945, we held that all judgments of a political complexion of the courts during the Japanese régime ceased to be valid upon the reoccupation of the Islands by virtue of the principle or right of *postliminium*, and that a sentence of conviction of a crime of a political complexion

must be considered as having ceased to be valid *ipso facto* upon said reoccupation. (*See* authorities cited therein).

The only question to be decided in this appeal, therefore, is whether or not the punitive sentence imposed upon appellant was of a political complexion.

In the case of Alcantara *vs.* Director of Prisons (G. R. No. L–6, 42, Off. Gaz., 480), promulgated on November 29, 1945, this Court defined a punitive or penal sentence of a political complexion as one which "penalizes either a new act not defined in the municipal laws or acts already penalized by the latter as a crime against the legitimate government, but taken out of the territorial law and penalized as new offenses committed against the belligerent occupant, incident to a state of war and necessary for the control of the occupied territory and the protection of the army of the occupier. They are acts penalized for public rather than for private reasons, acts which tend, directly or indirectly, to aid or favor the enemy and are directed against the welfare, safety and security of the belligerent occupant."

The present case falls within the above definition. Although it is true that the crime of illegal possession of firearms was penalized by the municipal law, or section 2692 of the Revised Administrative Code as amended, it was taken out of the territorial law and penalized by the above-quoted section 27 of Executive Order No. 226, as a new offense committed against the belligerent occupant, with a penalty much heavier than that provided in said section 2692 of the Revised Administrative Code. The reason for this excessively heavier penalty is obvious. Executive Order No. 226 of the Chairman of the Philippine Executive Commission, an instrumentality of the Japanese army of occupation, was directed mainly against the resistance movement and the guerrillas. In the occupation of enemy territory, drastic punishment of illegal possessors of firearms is necessary for the control of the occupied territory and the protection and security of the belligerent occupant.

We therefore hold that the punitive sentence under consideration, although good and valid during the occupation of the Philippines by the Japanese forces, ceased to be good and valid upon the reoccupation of these Islands and the restoration therein of the Commonwealth Government.

In view of the foregoing, the present action against the accused and appellant is hereby dismissed with costs *de oficio*. So ordered.

Moran, C. J., Parás, Jaranilla, Pablo, and *Briones, JJ.*, concur.

Case dismissed.

[No. L-306. Marzo 26, 1946]

FERNANDO VILLEGAS, recurrente, *contra* ARSENIO C. ROLDAN, Juez de Primera Instancia de Laguna, y LEONCIA ALMARIO, recurridos.

1. PRÁCTICA FORENSE; PRUEBA DEL SERVICIO PERSONAL.—La prueba de haberse verificado el servicio personal consistirá en la admisión por escrito de la parte a quien se haya servido, o en el *affidávit* de la parte que efectúe el servicio, conteniendo una manifestación completa de la fecha, lugar y manera del servicio.
2. ID.; CONTESTACIÓN A LA DEMANDA ENMENDADA; PLAZO POR LA PRESENTACIÓN.—El artículo 3, Regla 9, dispone que si se enmienda la demanda, el plazo por la presentación y servicio de la contestación empezará, a menos que el juzgado ordene lo contrario, desde la entrega de la copia de la demanda enmendada.
3. ID.; DEMANDA; MANERAS DE ENMENDAR.—Hay varias maneras de enmendar la demanda: por supresión, adición, incorporación, sustitución, etc. Incorporar o unir el documento a la demanda es enmendarla (Regla 17, artículo 3, Reglamento de los Tribunales).
4. SENTENCIAS; NULIDAD; RECURSO DE LA PARTE OFENDIDA.—Cuando se ha dictado una sentencia—dijo este Tribunal en Lerma *contra* Antonio (6 Jur. Fil., 244)—sin haberse cumplido todas las condiciones precedentes que prescribe la ley, el recurso de la parte ofendida es procurar que se deje sin efecto dicha sentencia en el Juzgado en que se cometió el error. Los actos hechos contra lo que prescribe la ley deben ser nulos necesariamente, pero la infracción de la ley procesal no implica en realidad falta de jurisdicción por parte del Juzgado que entiende en el asunto, sino que, al contrario, presupone dicha jurisdicción.

JUICIO ORIGINAL en el Tribunal Supremo. *Certiorari.*

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Fernando Villegas en su propia representación.

D. Nestor B. Alampay en representación de la recurrida Almario.

Nadie compareció en representación del Juez recurrido.

PABLO, *M.:*

Trátase de una solicitud de *certiorari* en la que el recurrente pide que se declare nula y de ningún valor la orden de fecha noviembre 26, 1945 del Juez recurrido, en la causa civil No. 7802, del Juzgado de Primera Instancia de la Laguna, alegando que éste abusó de su discreción, que obró sin jurisdicción y que el recurrente no tiene otro remedio fácil y expedito.

En febrero 10, 1944, Fernando Villegas presentó demanda contra Leoncia Almario en la causa citada, reclamando la posesión de su casa con los alquileres mensuales de ₱15 desde el mes de abril de 1940 hasta el mes de enero de 1944.

En marzo 8, 1944, la demandada presentó una moción en la que pide que se ordene al demandante que una a la demanda el documento citado en el párrafo 2 de la misma para que pueda preparar debidamente su contestación. En marzo 13, el Juzgado accedió a esta petición, ordenando a la demandada que presente su contestación dentro del término reglamentario. El demandante unió dicho documento a la demanda con la anotación de que una copia ha sido enviada a la demandada. Esto no es suficiente. "La prueba de haberse verificado el servicio personal consistirá en la admisión por escrito de la parte a quien se haya servido o en el *affidavit* de la parte que efectúe el servicio, conteniendo una manifestación completa de la fecha, lugar y manera del servicio." (Regla 27, artículo 10.)

En mayo 24, el demandante presentó una moción de rebeldía, alegando que la demandada no presentó su contestación. Creyendo de buena fé la alegación, el Juzgado dictó una orden de rebeldía, y, después de estudiadas las pruebas, promulgó su sentencia en junio 21, 1944, a favor del demandante. Copia de esta decisión ha sido enviada a la demandada en junio 30 por correo certficado; pero la demandada no la recibió. No se ha unido al expediente la tarjeta de recibo (*return card*).

En septiembre 8, 1945, el Juzgado expidió la orden de ejecución y de ella fué notificada la demandada en septiembre 19. En dicho día solamente se enteró la demandada de que contra ella se dictó orden de rebeldía, sentencia y ejecución.

En octubre 1, la demandada presentó su moción de reconsideración con declaraciones juradas sobre el motivo de la no presentación de la contestación y naturaleza de su defensa, pidiendo que se revoque la orden y sentencia de rebeldía, que se le permita presentar su contestación y que se le conceda nueva vista.

En noviembre 26, 1945, el Honorable Juez recurrido dictó una orden revocando la sentencia dictada y que se vea de nuevo la causa.

En la vista de la moción de reconsideración presentada por la demandada, el demandante no presentó prueba de que la demandada recibió copia del documento que se unió a la demanda. A falta de tal prueba, la declaración jurada de la demandada de que no la recibió debe prevalecer. Como no recibió copia, la moción de rebeldía era completamente injustificada.

El recurrente arguye diciendo que la orden del Juzgado a la demandada de presentar su contestación dentro del período reglamentario, no especificaba que debía contarse desde la fecha de la recepción de la copia del documento. Tal especificación es innecesaria. El artículo 3, Regla 9,

dispone que si se enmienda la demanda, el plazo por la presentación y servicio de la contestación empezará, a menos que el juzgado ordene lo contrario, desde la entrega de la copia de la demanda enmendada.

Hay varias maneras de enmendar la demanda: por supresión, adición, incorporación, sustitución, etc. Incorporar o unir el documento a la demanda es enmendarla (Regla 17, artículo 3, Reglamento de los Tribunales). La demandada tenía derecho a recibir notificación de la enmienda, y, en este caso particular, copia del documento; tenía derecho a presentar su contestación y ser notificada del día de la vista. Se le privó de tales derechos, y a espaldas de ella, sin culpa de su parte, se celebró la vista y se dictó sentencia contra ella. Toda la actuación desde la incorporación a la demanda del documento hasta la expedición de la ejecución es nula y de ningún valor.

El argumento del recurrente de que el Juzgado no tenía jurisdicción al anular su decisión que ya ha quedado firme es insostenible. Dicha decisión nunca ha tenido un solo momento de validez: era nula *ab initio*.

"It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered." (17 C. J., 1133).

Cuando se ha dictado una sentencia—dijo este Tribunal en Lerma *contra* Antonio (6 Jur. Fil., 244)—sin haberse cumplido todas las condiciones precedentes que prescribe la ley, el recurso de la parte ofendida es procurar que se deje sin efecto dicha sentencia en el Juzgado en que se cometió el error. Los actos hechos contra lo que prescribe la ley deben ser nulos necesariamente, pero la infracción de la ley procesal no implica en realidad falta de jurisdicción por parte del Juzgado que entiende en el asunto, sino que, al contrario, presupone dicha jurisdicción.

En el asunto de Muerteguy y Aboitiz *contra* Delgado (22 Jur. Fil., 111), este Tribunal dijo: "De autos resulta, de una manera clara, que el demandado no fué notificado de que se había señalado la vista de la causa para un día determinado. En autos consta que después de comenzado el juicio, el abogado del demandado fué notificado de que se estaba celebrando la vista, pero por razón de otras ocupaciones, le fué imposible estar presente ni un solo momento en el juicio. Las partes tienen derecho a estar presentes en el juicio de su causa ya sea por sí, ya por sus abogados. Tienen también derecho a que se les notifique con tiempo

razonable de la fecha señalada para la vista de su asunto. En su consecuencia, por razón de que el demandado no tuvo oportunidad de estar presente cuando se celebró la vista del presente asunto y ofrecer su defensa, se deja sin efecto por la presente la sentencia y se ordena que se celebre una nueva vista."

Reiterando la doctrina anterior, en el asunto de Lavitoria *contra* Juez de Primera Instancia de Tayabas (32 Jur. Fil., 214), dijo este Tribunal: "Las partes litigantes tienen derecho a estar presentes en la vista de sus asuntos, ya por sí mismas, ya por sus abogados. Asímismo tienen derecho a que se les notifique, con una antelación razonable, la fecha señalada para la vista de la causa. Si el Juez descubre que alguna de las partes no ha sido notificada de la celebración de la vista, puede de *motu proprio* conceder una nueva vista, y su auto, en tal caso, no está fuera de su jurisdicción."

Se deniega la solicitud con las costas contra el recurrente. *Moran, Pres., Parás, Jaranilla, Feria,* y *Briones, MM.,* están conformes.

Se deniega la solicitud.

[No. L-53. March 27, 1946]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELANIO REYES Y GAYAKAN, defendant and appellant

EVIDENCE; HEARSAY; TESTIMONY OF WIFE WITHOUT CONSENT OF HUSBAND.—The testimony of V. M. to the effect that on the same day her pig reappeared, the wife of the accused told her that it was her husband who had taken the pig, aside from being hearsay, is incompetent and inadmissible; even before the court the wife could not have testified for or against her husband without his consent (section 26 [*d*], Rule 123). The trial court should have granted counsel's motion to strike it out.

APPEAL from a judgment of the Court of First Instance of Manila. Diaz, J.

The facts are stated in the opinion of the court.

Manuel S. Enverga and *Felix V. Makasiar* for appellant.

Assistant Solicitor-General Cañizares and *Solicitor Feria* for appellee.

OZAETA, *J.*:

On July 12, 1945, a sow belonging to Virginia Mendoza, of 17 Geronimo Street, Sampaloc, Manila, disappeared from her back yard where she had tied it. Two days later the animal reappeared.

On the same day that Virginia missed her pig, her neighbor Marina Lopez saw Melanio Reyes, of 19 Geronimo Street, leading a pig. Melanio Reyes denied having taken

Virginia's pig; so she went to the police station and denounced him. On the same day Policeman Felix Carlos investigated Melanio Reyes, but the latter denied having stolen Virginia's hog, which the policeman told him was valued at ₱100. In the course of the investigation Melanio Reyes remarked that the price of ₱100 was exorbitant and that even if he had intended to pay for the hog he could not do so because he did not have enough money. The policeman did not find any hog in the premises of Melanio Reyes at that time.

Melanio Reyes was arrested on July 12 and detained until August 3, 1945, when he was able to furnish bail. Accused and convicted of theft in the Municipal Court, he appealed to the Court of First Instance, which likewise found him guilty and sentenced him to four months of *arresto mayor*.

After a careful study of the evidence adduced during the trial, we find that the guilt of the accused has not been proved beyond reasonable doubt. The testimony of the only eyewitness, Marina Lopez, that she saw the accused leading a hog on the day in question was admitted by the accused, but the latter explained that the hog he was leading and which Marina Lopez saw, was his own. That he owned said hog was corroborated by Domingo Velo, who at that time was boarding in the house of the accused and who said he was the one who had reported to the accused on that day that his hog had broken loose and had gone astray. Marina Lopez was careful to say in her testimony that she did not know whose hog Melanio Reyes was leading on July 12, 1945. The complainant herself admitted that the accused owned a pig—smaller, she said, than hers.

The testimony of Virginia Mendoza to the effect that on the same day her pig reappeared, the wife of the accused told her that it was her husband who had taken the pig, aside from being hearsay, is incompetent and inadmissible; even before the court the wife could not have testified for or against her husband without his consent (section 26 [*d*], Rule 123). The trial court should have granted counsel's motion to strike it out.

The alleged remark of the accused to the policeman that the value of ₱100 given by the complainant for the pig in question was exorbitant and was beyond his means, did not necessarily mean an admission of guilt. That may have been due to a suggestion of the policeman that he pay for the lost animal. As a matter of fact, the policeman testified that the accused never admitted, but on the contrary persistently denied, that he had ever taken the hog of the complainant.

The short piece of rope allegedly found by the complainant in the premises of the accused has not been identified as the very same rope with which her hog was tied before it disappeared.

It is not improbable that the sow in question broke loose and disappeared for some time in search of feed.

Not being convinced of the guilt of the accused beyond reasonable doubt, we reverse the sentence appealed from and acquit the appellant, with costs *de oficio*.

De Joya, Perfecto, Hilado, and *Bengzon, JJ.,* concur.

Judgment reversed; defendant acquitted.

[No. L-246. March 27, 1946]

SILVERIO VALDEZ, petitioner, *vs.* ANTONIO G. LUCERO, Judge of First Instance of Ilocos Sur, and CELESTINO JIMENEZ Provincal Warden of Ilocos Sur, respondents.

1. COURTS; JURISDICTION; CONCURRENT JURISDICTION OF CIVIL COURTS OVER CRIME OF MURDER COMMITTED BY PERSON SUBJECT TO MILITARY LAW.—Granting all the facts alleged by the petitioner and that he was a regular member of the guerrilla duly recognized by the United States Army and granting further that his unit was incorporated into the United States Army, thus giving him the standing of a regular member of the United States armed forces, and that he was subsequently incorporated into the Philippine Army, the civil courts of the Commonwealth of the Philippines nevertheless are not deprived of their jurisdiction over the petitioner herein, but have concurrent jurisdiction with the military courts or general courts-martial to try and take cognizance of the case of murder against him; for the reason that article 93 of the Articles of War (Com. Act No. 408) is almost identical with the 92d Article of War of the United States Army, and the latter has been interpreted by the courts to mean that even in time of war the civil courts are not deprived of their jurisdiction over murder cases committed by persons subject to military law.
2. ID.; ID.; ID.; DELIVERY OF OFFENDING SOLDIER TO CIVIL AUTHORITIES EXCEPT IN TIME OF WAR; CONCURRENT JURISDICTION OF CIVIL COURTS UPON CESSATION OF HOSTILITIES.—Notwithstanding the provision in the Articles of War requiring a soldier to be delivered to civil authorities for trial for an alleged crime *except in time of war, the jurisdiction of military courts over a soldier is not exclusive of the civil courts even during time of war,* if the soldier was stationed within one of the states where the civil courts were functioning and *where no actual hostilities were in progress.*" (*Ex parte* Koester [1922], 206 P., 116; 56 Cal. App., 621.)
3. ID.; ID.; ID.; RIGHT OF PRIORITY TO BE INVOKED BY MILITARY COURTS.—The petitioner cannot raise and invoke the right to be tried by a court-martial without the military authorities' claiming to try him in accordance with the military law or the Articles of War.

ORIGINAL ACTION in the Supreme Court. *Mandamus.*

The facts are stated in the opinion of the court.

Severino D. Dagdag for petitioner.
Respondent *Judge* in his own behalf.
No appearance for respondent *Warden.*

JARANILLA, *J.:*

The above-entitled case came up to be regularly heard in this Court by virtue of a petition filed by Silverio Valdez praying that judgment be rendered "(*a*) annulling the proceedings of the lower court, (*b*) declaring the respondent judge without jurisdiction of the case, (*c*) commanding the respondent judge to desist from further proceedings in the cause, (*d*) ordering the provincial warden, Celestino Jimenez, to discharge the defendant, Silverio Valdez, from jail, (*e*) granting preliminary injunction enjoining the respondent judge from hearing the case on the merits pending proceedings in the case, (*f*) assessing costs against the respondents, and (*g*) granting such other or further relief or reliefs as may be just or equitable."

The undisputed facts are:

That Silverio Valdez was prosecuted for murder under an information filed by the provincial fiscal in the justice of the peace court of Vigan, Ilocos Sur, which information, in part, reads as follows:

"That on or about the 17th day of January, 1945, in the barrio of San Julian, municipality of Bantay, Province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named defendant, Silverio Valdez, with intent to kill, and with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously with cruelty, by deliberately and inhumanly augmenting the suffering of one Juan Ponce, kill the latter with bolo, dagger and other weapons and died instantly."

That said Silverio Valdez moved for the dismissal of the foregoing information in the justice of the peace court, alleging that the fiscal had no authority to file it and that the court acquired no jurisdiction of the defendant, which motion was denied by the justice of the peace on September 5, 1945; and that since that date the accused has been detained as a provincial prisoner in the provincial jail in Vigan, Ilocos Sur;

That on September 13, 1945, the provincial fiscal reproduced the said information in the Court of First Instance of Ilocos Sur; and that the defendant filed a motion to quash it on December 18, 1945, which motion was denied by the court on December 20, 1945;

That on December 29, 1945, a petition for the reconsideration of the denial of the motion to quash was filed but was also denied on January 7, 1946.

The main issue here is whether the civil courts have jurisdiction to take cognizance of and try the case for murder filed against petitioner Silverio Valdez, as above stated, because, he alleges, he was not only a member of a recognized guerrilla and hence a member of the United States armed forces in the Philippines, in North Luzon, but was also later on absorbed into the Philippine Army and therefore, he claims, he should be tried by a general court-martial, which has jurisdiction over the crime charged and the person of the accused pursuant to article 93 of the Articles of War (Commonwealth Act No. 408).

Petitioner also contends that the whole of Ilocos Sur was at the time imputed in the information overrun by the enemy and that any place of hiding of the guerrillas in the province was a military reservation for the safety of the Philippine and American armed forces within the purview of the Articles of War.

Petitioner further contends that granting, without admitting, that he was the author of the crime charged, nevertheless if the supposed victim were a spy, committing espionage amidst Philippine and American armed forces and the enemy in actual combat, he may be exempt from liability or may justify the commission under section 2 of Article II of the Constitution of the Philippines, in military courts, provided the procedure prescribed for the administration of military justice has been obeyed and followed in making executions of spies.

During the oral argument of this case, we understood from counsel appearing for petitioner that neither the United States Army nor the Philippine Army was cleaiming precedence or priority in the trial of the herein petitioner, nor that either was demanding that he be tried by a court-martial. In fact, no allegation to that effect may be found in his petition.

The petitioner relies mainly on the provision of article 93 of the Articles of War (Commonwealth Act No. 408) which reads:

"ART. 93. *Murder.*—Any person subject to military law who commits murder in time of war shall suffer death or imprisonment for life, as a court-martial may direct."

He argues that pursuant to said article 93 of the Articles of War only a court-martial can have jurisdiction to try his case for murder, he being a person subject to military law and the crime having been committed in time of war.

Granting all the facts alleged by the petitioner and that he was a regular member of the guerrilla duly recognized by the United States Army and granting further that his unit was incorporated into the United States Army, thus

giving him the standing of a regular member of the United States armed forces, and that he was subsequently incorporated into the Philippine Army, we are of the opinion, nevertheless, that the civil courts of the Commonwealth of the Philippines are not deprived of their jurisdiction over the petitioner herein, but have concurrent jurisdiction with the military courts or general courts-martial to try and take cognizance of the case of murder against the petitioner herein, for the reason that said article 93 of the Articles of War is almost identical with the 92d Article of War of the United States Army, and the latter has been interpreted by the courts to mean that even in time of war the civil courts are not deprived of their jurisdiction over murder cases committed by persons subject to military law. Such was the holding in Cadwell *vs.* Parker (Ala., 1920; 40 Sup. Ct., 388; 252 U. S., 376; 64 Law. ed., 621):

"That section 1564 of this Article [Art. 92], providing for punishment of murder or rape as the court-martial may direct, but prohibiting trial by courts-martial in time of peace, section 1565 of this Article [Art. 93], providing for the punishment of various other offenses as a court-martial may direct, and this section [Art. 74], requiring military authorities to deliver accused persons to the civil authorities, except in time of war, *do not give military courts exclusive jurisdiction in time of war over offenses committed in violation of state laws by persons in the military service, and a state court has jurisdiction over such offenses.*" (*Emphasis* added.)

Identical doctrines holding that the civil courts have concurrent jurisdiction over cases of murder committed by persons subject to military law were laid down in the following cases:

"*Articles of War* enacted August 29, 1916, *do not deprive the civil courts, either in time of peace or war, of the concurrent jurisdiction* previously vested in them *over crimes against either federal or state law committed* within the United States *by persons subject to military law.*" (United States *vs.* Hirsh [D. C., N. Y. 1918], 254 F., 109; *emphasis* added.)

"Prisoners of war are amenable for offenses *malum in se* and may be tried by the ordinary tribunals in the country in which the crime is committed; and this though they may also be triable by courts-martial." (Govt. *vs.* McGregory [1780], 14 Mass., 499.)

"A court of oyer and terminer had jurisdiction to try all cases of murder committed within the country, and that a *murder committed by a soldier in the military service* of the United States, *in time of war,* insurrection, or rebellion, *forms no exception.*" (People *vs.* Gardiner [N. Y., 1865], 6 Parker Cr. R., 143; *emphasis* added.)

"Any changes in Articles of War in years 1913 and 1916 did not alter rule that courts-martial do not have exclusive jurisdiction for trial of a soldier for murder committed in time of war, but that the state courts have jurisdiction until it is assumed by military authorities." (People *vs.* Denman [1918], 177 P., 461; 179 Cal., 497.)

In the instant case it also appears that when the information for murder was filed the Philippines had already been liberated and the actual hostilities had already ceased. It is claimed, however, that up to the present time a status of war still exists for the reason that the treaty of peace has not as yet been signed. But this contention cannot be upheld because, although the formal termination of war by means of the signing of the treaty has not yet been effected, at the time when the petitioner was prosecuted for murder in the civil courts the actual fighting or hostilities were no longer going on; in other words, the actual fighting had already ceased and the Philippines had already been liberated. Thus it was held in the following decision:

"Notwithstanding this section [Art. 74], requiring a soldier to be delivered to civil authorities for trial for an alleged crime *except in time of war, the jurisdiction of military courts over a soldier is not exclusive of the civil courts even during time of war,* if the soldier was stationed within one of the states where the civil courts were functioning and *where no actual hostilities were in progress.*" (*Ex parte* Koester [1922], 206 P., 116; 56 Cal. App., 621; emphasis added.)

It clearly appears also in the present case as aforesaid that the military authorities are not claiming priority to try the petitioner herein as provided in the Articles of War. Such being the case, we are of the opinion that the petitioner cannot raise and invoke the right to be tried by a court-martial without the military authorities' claiming to try him in accordance with the military law or the Articles of War. To this effect was the ruling in People *vs.* Denman (*supra*):

"*Conceding paramount right of military authorities in time of war* to custody of soldier notwithstanding criminal charges against him in the courts of a state, *the right inures solely to military courts and cannot be raised by the offender.*" (*Emphasis* added.)

In Funk *vs.* State ([1919], 208 S. W., 509; 84 Tex. Cr. R., 402), the following doctrines were also laid down:

"*A soldier* of the United States *who murders a citizen of the state offends against both the military and the state laws and may be tried in the state courts.*

"*Although under this section* [Art. 92], *military authorities have the prior right to try a soldier who has murdered a citizen, the soldier who has committed the crime cannot object to being tried by a state court, where the military authorities have not asserted any right.*" (*Emphasis* added.)

In view of all the foregoing, we are of the opinion and so hold that the Court of First Instance of Ilocos Sur has jurisdiction over the murder case against the petitioner and cannot be deprived of such jurisdiction. This being

our conclusion, it is unnecessary to pass upon the other questions of law raised by the petition.

Being without any merit whatsoever, the petition is hereby dismissed, with costs against the petitioner.

Moran, C. J., Ozaeta, Parás, Feria, De Joya, Pablo, Perfecto, Hilado, Bengzon, and *Briones, JJ.,* concur.

Petition dismissed.

[CA-No. 475. Marzo 27, 1946]

LIM TEK GOAN, demandante y apelado, *contra* JOSÉ AZORES, demandado y apelante

1. PRÁCTICA FORENSE; TERCERÍA; DISCRECIÓN DEL JUZGADO; CASO DE AUTOS.—Bajo las circunstancias de este caso, estimamos que el Juzgado procedió correctamente en el ejercicio de su discreción al rechazar de plano el escrito de tercería (Regla 13, Reglamento de los Tribunales).
2. PRUEBAS; NUEVA PRUEBA; HOSTILIDAD O INDIFERENCIA DE UNA PERSONA PARA DECLARAR COMO TESTIGO.—La circunstancia de que después de la vista una persona haya resuelto romper su silencio o deponer su hostilidad, no hace de su testimonio una prueba nuevamente descubierta en el sentido jurídico de la palabra. Se ha declarado que "the failure of applicant to inquire *what a person supposed to have knewledge* of a matter in controversy knew about it or to call or examine him as a witness is not excused ordinarily by the fact that their *relations were unfriendly,* or that the witness *was believed to be hostile.*" (46 C. J., pp. 255, 256.)
3. MANDATO; RESPONSABILIDAD PERSONAL DEL MANDATARIO, SI ÉSTE OBRA EN SU PROPIO NOMBRE.—Aun suponiendo que en la fecha de autos hubiera relación de mandato entre E. A. y el apelante, no habiendo éste revelado su condición de mandatario al realizar la compra, quedaba directamente obligado en favor del vendedor, como si el asunto fuera personal suyo, a tenor del artículo 1717 del Código Civil.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Laguna. Amador, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Gómez & Acuña en representación del apelante.
Sres. Farcón & Belulia en representación del apelado.

BRIONES, *M.:*

El 31 de mayo, 1941, Lim Tek Goan, demandante, entabló acción contra José Azores ante el juzgado de paz de San Pablo, Laguna, para el cobro de la cantidad de ₱371.40 más los intereses legales desde la interposición de la demanda y las costas del juicio. El juzgado de paz absolvió al demandado de la queja, pero elevado el asunto en grado de apelación ante el Juzgado de Primera Instancia, éste revocó la sentencia de aquél decidiendo el caso a favor del

demandante. De la sentencia así dictada el demandado ha interpuesto la presente apelación.

Según las alegaciones y pruebas del demandante, en la mañana del 11 de agosto de 1936 el demandado se apersonó en su tienda para comprar ciertos artículos de construcción que tenía especificados en una lista. El convenio era que el pago se efectuaría al recibirse los objetos en la casa del demandado, pero cuando el chófer del demandante hizo la entrega coincidió que el demandado estaba ausente, así que los artículos se dejaron en manos del maestro carpintero que a la sazón dirigía ciertas obras de mejora y reparación que se estaban ejecutando en la casa, sin que el chófer recibiese el pago convirtiéndose de este modo la venta en una al fiado en vez de al contado como rezaban las facturas (cash invoices). Algunos días después el demandado volvió a la tienda del demandante para pagar, pero no sin antes regatear ciertas partidas que le parecían caras y efectivamente escribió en la factura ".65 each" como indicando que pedía esta reducción, pero el demandante rehusó disminuir el precio, y el demandado salió sin pagar prometiendo hacerlo más tarde. Según el demandante, él requirió del demandado repetidas veces el pago, pero en vano, hasta que cansado de tanto esperar y requerir a buenas incoó la acción después de una demora de más de cuatro años. No acudió al juzgado más temprano porque el demandado y su familia eran de los más acomodados en el pueblo y le convenía conservar a toda costa la buena voluntad de tan jugosos parroquianos.

La defensa del demandado es de pura y absoluta negación. Con su único testimonio niega en absoluto haber comprado del demandante los materiales en cuestión. Dice que no pudo haber afectuado la compra que se le imputa porque en aquella época no vivía en la casa donde se utilizaron dichos materiales: los que habitaban en ella eran Nicolás Azores, su padre, y Emérita Santos, la barragana con quien éste vivía y tenía hijos naturales. Es más: debido a estas relaciones irregulares él estaba reñido con la barragana de su padre.

La cuestión que tenemos que determinar y resolver es puramente de hecho, a saber: si es o no verdad que el demandado compró del demandante en la fecha indicada los materiales de que se trata, con la promesa de pagar el precio al efectuarse la entrega en el domicilio del demandado, pero que éste no ha cumplido hasta ahora su obligación a pesar de repetidos requerimientos. Su Señoría, el Juez sentenciador que vió y oyó declarar a los testigos y practicó la toma de las pruebas resolvió esta cuestión de hecho a favor del demandante, y no hemos hallado en autos ningún motivo para adoptar un criterio

adverso. El análisis que Su Señoría hace de las pruebas es enteramente cofrecto. Acerca de la compra han declarado como testigos, además del demandante, el chófer de éste, un tal Lim Tek Liong que fué quién llevó los materiales a la casa del demandado e hizo la entrega, y el maestro carpintero Cecilio Juliano que dirigía los obras de reparación en dicha casa, el cual recibió los materiales por estar entonces ausente el demandado. Que estos testigos han dicho la verdad, es cosa que, a nuestro juicio, no se puede disputar seriamente. Sus declaraciones son sustancialmente verídicas y resisten bien la prueba de un rígido escrutinio. Se arguye que el chófer tenía que ser parcial por su situación personal de dependencia en relación con el demandante; pero fuera de esta relación ¿hay en autos alguna prueba por la que se pueda tachar de falso el testimonio del chófer? Ninguna. Además, ¿qué tal el testimonio del maestro carpintero? De ser éste parcial ¿no sería más bien a favor del demandado?

Se pone bastante énfasis en la circunstancia de que el demandado parece ser un hombre rico, uno de los más ricos en su pueblo, siendo por esto increíble—arguye su defensor—que cometiese la acción de negar una deuda insignificante, una verdadera futesa para un hombre que hasta ha gastado centenares de pesos para sostener el presente pleito. El argumento sería válido y bueno si una inflexible lógica gobernara siempre las acciones y los negocios de los hombres; pero la experiencia nos demuestra que si a diario ocurren entuertos, enredos y anomalías es precisamente porque no hay para el libre albedrio una dialéctica intorcible, un imperativo categórico. Por eso vemos a veces que un rico actúa y se conduce como el más miserable, el más mezquino y el más avaro de los hombres; y en cambio vemos también que a veces un pobre procede como un verdadero prócer, con una honradez, una liberalidad y un desinterés que dejarían tamañito al más orgulloso poseedor de bienes y riquezas materiales.

La conducta del demandado frente a los repetidos requerimientos de pago, en particular el que hicieran los abogados del demandante poco antes de presentarse la demanda, es cosa que milita en contra de su defensa de simple negación de la deuda. Como acertadamente asevera el tribunal *a quo* en su sentencia, si la cuenta contra el demandado fuera falsa, desde los comienzos su reacción hubiera sido de sorpresa si no de indignación y hubiera protestado de palabra o por escrito contra las repetidas cobranzas que se le hacían. Las pruebas demuestran que nada de esto hizo el demandante; por el contrario, con su conducta entretuvo la esperanza de que alguna vez pagaría,

así que la acción judicial se demoró por bastante tiempo. Esto aparte de que, como dice bien el Juzgado *a quo*, no es verosímil que un comerciante de cierta seriedad como parece ser el demandante fraguara una cuenta falsa contra un parroquiano, sobre todo de la categoría del demandado.

Resulta de autos que después de terminada la vista, pero antes de promulgarse la decisión, Emérita Santos presentó un escrito de tercería pidiendo que el mismo fuese admitido. La tercerista alegaba que ella ya había satisfecho la cuenta al demandante y, por tanto, pedía o que éste le devolviese lo pagado, o bien que el demandado se lo reembolsase como en un caso de subrogación. El Juzgado rechazó la moción (*a*) porque se presentó fuera de tiempo, estando ya terminada la vista; (*b*) porque, además, la admisión de la tercería demoraría injustificadamente la pronta y expedita adjudicación de los derechos de las partes originales en el asunto; y (*c*) porque, de todas maneras, los alegados derechos de la tercerista quedarían perfectamente amparados en una acción separada. La tercerista no ha apelado del auto desestimatorio.

El demandado señala ahora en su alegato este proceder como uno de los errores cometidos por el Juzgado. Apenas si es necesario decir que el demandado no tiene derecho a plantear este señalamiento. Acaso la tercerista hubiera podido hacer este planteamiento ante Nos, pero ella no ha apelado. De todas maneras estimamos que el juzgado procedió correctamente en el ejercicio de su discreción al rechazar de plano el escrito de tercería (Regla 13, Reglamento de los Tribunales).

También se señala como error del juzgado el haber denegado la moción de nueva vista presentada por el demandado por el fundamento de haberse descubierto una nueva prueba, esto es, el testimonio de la referida Emérita Santos de que ella ya había pagado la cuenta en cuestión al demandante. En los *affidávits* de mérito que se acompañaron a la moción no se unió ningún documento firmado por el demandante o cualquiera otra prueba documental del pago; indudablemente la pretendida nueva prueba sería simplemente el testimonio oral de Emérita Santos. En cambio, se alegaba en los *affidávits* que mucho antes de la vista tanto el demandado como su abogado ya habían tratado de persuadir a la Emérita para que declarara en favor de aquél, pero invariablemente habían tropezado con la hostilidad o indiferencia de ella. Solamente después de la vista, según los *affidávits*, se decidió ella a hablar en favor del demandado. ¿Es ésta la nueva prueba de que habla la ley para justificar la reapertura del juicio? Evidentemente que no. Esos *affidávits* de mérito demuestran precisamente todo lo con-

trario, esto es, que antes de la vista y durante la misma ya la prueba existía y de ella tenían noción o conocimiento el demandante y su abogado; sólo que, según éstos, la testigo era hostil o indiferente. La circunstancia de que después de la vista haya resuelto romper su silencio o deponer su hostilidad, no hace de su testimonio una prueba nuevamente descubierta en el sentido jurídico de la palabra. Se ha declarado que "the failure of applicant to inquire *what a person supposed to have knowledge* of a matter in controversy knew about it or to call or examine him as a witness is not excused ordinarily by the fact that their *relations were unfriendly,* or that the witness *was believed to be hostile.*" (46 C. J., pp. 255, 256.)

En su último señalamiento de error el apelante sostiene y arguye que aun suponiendo cierto que había hecho la compra en cuestión, habiéndose utilizado los materiales comprados en la reparación de la casa de Nicolás Azores, la obligación era de éste en vida y, a su fallecimiento, del intestado. Esta pretensión es también insostenible. En el curso de este pleito el apelante jamás ha pretendido ser mandatario de su padre. Por el contrario, según su declaración, en la época de autos estaba reñido con la familia ilegítima de su padre y no tenía nada que ver con las obras efectuadas en la casa de que se trata. No había entre su padre y él relaciones de mandante y mandatario; y las pruebas del apelado establecen de una manera inconcusa que el apelante hizo la compra en su propio nombre, sin llevar el de su padre ni el de ningún otro. Su responsabilidad, por tanto, es absolutamente personal.

Pero aun suponiendo que en la fecha de autos hubiera relación de mandato entre Nicolás Azores y el apelante, no habiendo éste revelado su condición de mandatario al realizar la compra, quedaba directamente obligado en favor del vendedor, como si el asunto fuera personal suyo, a tenor del artículo 1717 del Código Civil que dice lo siguiente:

"ART. 1717. Cuando el mandatario obra en su propio nombre, el mandante no tiene acción contra las personas con quienes el mandatario ha contratado, ni éstas tampoco contra el mandante.

"En este caso el mandatario es el obligado directamente en favor de la persona con quien ha contratado, como si el asunto fuera personal suyo.

"Lo dispuesto en este artículo se entiende sin perjuicio de las acciones entre mandante y mandatario."

El apelante no podría invocar la excepción contenida en este artículo por la sencilla razón de que el contrato de compraventa no versó sobre cosas propias del supuesto mandante, sino sobre cosas de un tercero que en este caso era el demandante.

Por las consideraciones expuestas, se confirma en todas sus partes la sentencia objeto de apelación, con las costas en contra del apelante en todas las instancias. Así se ordena.

Moran, Pres., Parás, Jaranilla, Feria, y *Pablo MM.*, están conformes.

Se confirma la sentencia.

[No. L-132. Marzo 28, 1946]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* PABLO CELIS, acusado y apelante

DERECHO PENAL; HURTO; ELEMENTO DEL HURTO CUALIFICADO.—La mera circunstancia de que el acusado trabajara como obrero en el lugar donde se cometió el hurto no pudo, a nuestro juicio, haber creado aquella relación de confianza e intimidad doméstica que, según la ley, determina el delito de hurto cualificado.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Manila. Félix, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. José Agbulos en representación del apelante.

El Procurador General Auxiliar Sr. Cañizares y el *Procurador Sr. Torres,* en representación del Gobieno.

BRIONES, *M.:*

Trátase de la apelación contra la sentencia del Juzgado de Primera Instancia de Manila en que se le condena al acusado por el delito de hurto cualificado a sufrir una pena indeterminada de no menos de cuatro meses y un día de arresto mayor ni más de cuatro años, dos meses y un día de prisión correccional, y a pagar las costas del juicio.

Según las pruebas de la acusación, el Sargento Charles Sutton, mientras volvía de inspeccioner el *Medical Depot* No. 1 (almacén o depósito), situado en el área del puerto de Manila, que estaba bajo su cargo, topó con el acusado Pablo Celis que entonces trabajaba como obrero en el lugar, notando que el mismo parecía algo excitado. Entrando en sospechas sobre la conducta del acusado, Sutton registró el cuerpo del mismo y encontró escondidos bajo su camisa tres esfigmómetros (instrumentos médicos) de la propiedad del Ejército de los Estados Unidos, instrumentos cuyo valor el tribunal *a quo* estimó en la cantidad de ₱200.

El acusado admite haber tenido en su posesión los tres esfigmómetros en cuestión en la fecha y lugar de autos,

pero niega haberlos hurtado, diciendo que los había encontrado casualmente en un montón de basura que había en el sitio donde él trabajaba, en los alrededores del *Medical Depot,* en el área del puerto de Manila. El tribunal *a quo* halló insuficiente esta explicación del acusado para los efectos de su exculpación. Toda la cuestión, pues, se reduce a la credibilidad de las pruebas, y no hemos hallado nada en autos que justifique una conclusión diferente o contraria a la sentada por el Juez *a quo* en su decisión.

En primer lugar, el Sargento Sutton declara que cuando él encontró al acusado con los instrumentos médicos ocultos bajo su chaqueta, éste admitió espontáneamente haberlos extraído de la bodega donde el mismo trabajaba. Sutton declara también que no había ningún montón de basura cerca del lugar donde prendió al acusado. Nada hay en autos para que se dude de la veracidad de Sutton. A todo esto hay que añadir estas circunstancias: delante del Sargento el acusado demostró una sospechosa nerviosidad; y luego ¿por qué había de esconder bajo su chaqueta los instrumentos si el hallazgo de los mismos hubiera sido inocente, de acuerdo con su alegación? Además, resulta extraño que los esfigmómetros al parecer nuevos y en excelente condición hubieran sido tirados en un montón de basura.

El abogado defensor señala como error del juzgado el haber condenado al acusado por el delito de hurto cualificado. Por su parte, el Procurador General abunda en esta aserción del abogado defensor. La mera circunstancia de que el acusado trabajara como obrero en el lugar donde se cometió el hurto no pudo, a nuestro juicio, haber creado aquella relación de confianza e intimidad doméstica que, según la ley, determina el delito de hurto cualificado. Estados Unidos *contra* Claravall (31 Jur. Fil., 685); Pueblo *contra* Koc Song (63 Jur. Fil., 394.)

Concluímos, por tanto, que el delito cometido es el de simple hurto para el cual el Código señala una pena menor. Hallando correcta la recomendación que hace el Procurador General en su alegato bajo las disposiciones de la Ley de Sentencia Indeterminada, modificamos el fallo apelado condenando al apelante a sufrir una pena de no menos de dos meses de arresto mayor y de no más de un año, siete meses y once días de prisión correccional. Se confirma la sentencia en todo lo demás. Así se ordena.

Moran, Pres., Parás, Jaranilla, Feria, y *Pablo, MM.,* están conformes.

Se modifica la sentencia.

[No. L-200. March 28, 1946]

ANASTACIO LAUREL, petitioner, *vs.* ERIBERTO MISA, as Director of Prisons, respondent

1. CONSTITUTIONAL LAW; VALIDITY OF SECTION 19 OF COMMONWEALTH ACT NO. 682; CLASS LEGISLATION; UNLAWFUL DELEGATION OF LEGISLATIVE POWERS; RETROACTIVE EFFECT.—Section 19 of Commonwealth Act No. 682, suspending the provisions of article 125 of the Revised Penal Code in so far as political detainees were concerned, for six months from their formal delivery by the Commander in Chief of United States Army in the Philippines to the Commonwealth Government, is not discriminatory in nature, unlawful delegation of legislative powers, and retroactive in operation.

Per PERFECTO, *J.*, dissenting:

2. WARRANT OF ARREST.—One of the essential requisites for depriving a person of his liberty, when he is accused of an offense, is the existence of a warrant of arrest issued in accordance with the provisions of the Constitution, if the due process clause of the same must be complied with.
3. SPECIFIC OFFENSE.—One of the fundamental rights of an accused is to be informed of the nature and cause of the accusation against him. That right is violated when accused is detained for "active collaboration with the japanese during the japanese régime," there being no such offense described in any law applicable to petitioner.
4. SEVERAL CONSTITUTIONAL RIGHTS VIOLATED.—Upon the facts of the case, several constitutional rights of petitioner appeared to have been violated, such as the right to meet witnesses face to face, to have witnesses in his behalf compelled to appear, to have speedy and public trial, to have equal protection of the laws, to be free from cruel and unusual punishment.
5. SECTION 19 OF ACT NO. 682.—Section 19 of Commonwealth Act No. 682, providing for the suspension of article 125 of the Revised Penal Code, and as said suspension is interpreted and applied in actual practice, is violative of the due process of law constitutional guaranty.
6. AUTHORIZES TRAMPLING PERSONAL FAVOR.—Section 19 of Commonwealth Act No. 682, as interpreted, in fact, authorizes public officers and employees to deprive and continue depriving the political prisoners concerned of their personal liberty, without due or any legal process of law.
7. DISCRIMINATION.—No one can, with candor and fairness, deny the discriminatory character of the provision. If all discriminations are abhorrent under any régime of law and justice, it is imperatively more so in a democracy.
8. DICTATORSHIP.—Granting the Special Prosecutors' Office full discretion as to how long within the six-month maximum article 125 of the Revised Penal Code must continue suspended, turns said office into a dictatorship which may dispense its favors and disfavors to individual prisoners under no other test than its convenience and whims.
9. THE CREATION OF A SPECIAL COURT FOR SPECIAL PURPOSES.—The creation of a special court to try cases arising years before its creation is a blunder identical in nature and viciousness to the former practice of shuffling judges of first instance, the judicial *rigodon* resorted to before to suit certain purposes

of the government and which was stopped by Judge Borromeo's courageous defense of the independence of the judiciary, in a leading case before the Supreme Court which made history.

10. SEGREGATION OF UNCONSTITUTIONAL PROVISIONS.—We are not ready to support petitioner's contention that the whole Commonwealth Act No. 682 should be declared null and void because of unconstitutional provisions contained therein, considering that said provisions may be segregated and the remaining portions of the text may stand on their own feet.
11. A WRONG PRINCIPLE.—The creation of the People's Court should not set a precedent that will sanction a wrong principle. Generally speaking, the creation of temporary tribunals to administer justice in specifically pre-determined existing cases is contrary to the nature and character of judicial functions.
12. WHAT JUDGES ARE SUPPOSED TO DECIDE.—Judges are not supposed to decide on what may appear right or wrong in the evanescent moment when the voice of passion grows louder in the market of human activities. They must not make decisions in the spur of news that wake screaming headlines and arouse the uncontrollable emotions of political leaders or of the populace. They must decide between right and wrong by the criterion of universal conscience, by the judgment, not only of the fleeting instance of evolving history, but the unending caravans of generations to come.
13. PERMANENT INSTITUTIONS.—In order that judges could render judgments of lasting value which would embody the wisdom of the ages and the moral sense of all time, it is necessary that they should preside over tribunals which must be looked upon as permanent institutions of justice, not temporary makeshifts, more appropriate to serve ephemeral purposes than to be the inviolable temples of an eternal goddess.
14. INTELLECTUAL OVERHAULING.—The facts of current experience, showed the imperative need of a wholesale intellectual overhauling as part of the work of post-war rehabilitation in all orders of our national life.
15. MANY ELEMENTAL TENETS AND IDEALS NEED BE RESTATED.—The worries and psychological shocks caused by the japanese initial victories and brutal oppressions concomitant with their occupation of our country, had the effect of warping the mentality and sense of moral values of not a negligible number of persons, and many elemental ideas and tenets must be restated, if not rediscovered. Among them is our concept on human freedom.

ORIGINAL ACTION in the Supreme Court. *Habeas Corpus.*

The facts are stated in the opinion of the court.

Sulpicio V. Cea for petitioner.

First Assistant Solicitor-General Reyes and *Solicitor Hernandez, Jr.*, for respondent.

Arturo A. Alafriz as *Amicus Curiae.*

BENGZON, *J.:*

Anastasio Laurel demands his release from Bilibid Prison, mainly asserting that Commonwealth Act No. 682, creating the People's Court, specially section 19, under

which he is detained as a political prisoner, is unconstitutional and void. The Solicitor-General, meeting the issue, sustains the validity of the whole law.

According to the pleadings, the petitioner, a Filipino citizen, was arrested in Camarines Sur in May, 1945, by the United States Army, and was interned, under a commitment order "for his active collaboration with the Japanese during the Japanese occupation," but in September, 1945, he was turned over to the Commonwealth Government, and since then has been under the custody of the respondent Director of Prisons.

The legality of the petitioner's arrest and detention by the military authorities of the United States is now beyond question.[1] His present incarceration, which is merely a continuation of his previous apprehension, has lasted "more than six hours" counted from his delivery to the respondent; but section 19 of Act No. 682 provides in part as follows:

"Upon delivery by the Commander in Chief of the Armed Forces of the United States in the Philippines of the persons detained by him as political prisoners, to the Commonwealth Government, the Office of Special Prosecutors shall receive all records, documents, exhibits and such other things as the Government of the United States may have turned over in connection with and/or affecting said political prisoners, examine the aforesaid records, documents, exhibits, etc., and take, as speedily as possible, such action as may be proper: *Provided, however* * * *

* * * * * * *

"*And provided, further*, That in the interest of public security, the provisions of article one hundred twenty-five of the Revised Penal Code, as amended, shall be deemed, as they are hereby, suspended, insofar as the aforesaid political prisoners are concerned, until the filing of the corresponding information with the People's Court, but the period of suspension shall not be more than six (6) months from the formal delivery of said political prisoners by the Commander in Chief of the Armed Forces of the United States in the Philippines to the Commonwealth Government."

In view of this provision, and the statement of the Solicitor-General that even on the date the petition was presented his office had, ready for filing, an information charging herein petitioner with treason, we fail to see how petitioner's release may now be decreed.

However, he contends that the aforesaid section violates our Constitution, because it is (*a*) discriminatory in nature; (*b*) unlawful delegation of legislative powers; and (*c*) retroactive in operation.

(*a*) It is first argued that the suspension is not general in application, it being made operative only to "the political prisoners concerned," that other citizens are not denied

[1] *See* Raquiza *vs.* Bradford (41 Off. Gaz., 626).

the six-hour limitation in article 125 of the Revised Penal Code, that such discrimination is unexcusable and amounts to denial of the equal protection of the laws.

It is accepted doctrine in constitutional law that the "equal protection" clause does not prevent the Legislature from establishing classes of individuals or objects upon which different rules shall operate—so long as the classification is not unreasonable.[2] Instances of valid classification are numerous. The point to be determined then, is whether the differentiation in the case of the political prisoner is unreasonable or arbitrary.

One of the proclamations issued by General MacArthur upon his arrival in Leyte (December 29, 1944) referred to those Filipino citizens who had voluntarily given aid, comfort and sustenance to the japanese. It announced his purpose to hold them in restraint for the duration of the war, "whereafter they shall be turned over to the Philippine Government for its judgment upon their respective cases." When active hostilities with japan terminated, General MacArthur ordered the delivery to the Commonwealth of all the prisoners theretofore taken under his said proclamation. There were 6,000 in round numbers. The problem was momentous and urgent. Criminal informations against all, or a majority, or even a substantial number of them could not be properly filed in the six-hour period. They could not obviously be turned loose, considering the conditions of peace and order, and the safety of the prisoners themselves. So the President, by virtue of his emergency powers, promulgated Executive Order No. 65 suspending article 125 of the Revised Penal Code, for not more than thirty days, with regard to said detainees or internees, having found such suspension necessary "to enable the Government to fulfill its responsibilities and to adopt temporary measures in relation with their custody and the investigation, prosecution and disposal of their respective cases." The Order added that it shall be in force and effect until the Congress shall provide otherwise. Congress later approved Commonwealth Act No. 682, establishing the People's Court and the Office of Special Prosecutors for the prosecution and trial of crimes against national security committed during the second World War. It found the thirty-day period too short compared with the facilities available to the prosecution, and set the limit at six months.

Considering the circumstances, we are not prepared to hold the extension of the period for the political detainees was unreasonable. The Legislature chose to give the pro-

[2] *See* 6 R. C. L. section 369; Tañada, Constitution of the Philippines, p. 74; 16 C. J. S., p. 954 *et seq.*

secutor's office sufficient time to investigate and to file the proper charge—or to discharge those whom it may find innocent. If time had not been granted, the prosecutor would perhaps have been forced to indict all the detainees indiscriminately; reserving, of course, its right subsequently to request the liberation of those it may think not guilty. But such wholesale indictment was obviously neither practical nor desirable. We will allow that there may be some dispute as to the wisdom or adequacy of the extension. Yet the point is primarily for the Legislature to decide. The only issue is the power to promulgate special rules for the custody and investigation of active collaborationists, and so long as reasons exist in support of the legislative action courts should be careful not to deny it.

In this connection, it must be stated there can really be no substantial ground to assail the six-month extension, in view of the provisions authorizing the release under bail. Article 125 of the Revised Penal Code was intended to prevent any abuse resulting from confining a person without informing him of his offense and without permitting him to go on bail. Commonwealth Act No. 682 gives no occasion to such abuse. The political prisoners know, or ought to know, they are being kept for crimes against national security. And they are generally permitted to furnish bail bonds.

(*b*) There is hardly any merit to the argument that as "the duration of the suspension of article 125 is placed in the hands of the Special Prosecutor's Office," the section constitutes an invalid delegation of Legislative powers; for as explained by the Solicitor General, the result—some informations filed before, others afterwards—is merely the "consequence of the fact that six thousand informations could not be filed simultaneously, and that some one had to be first or some one else, necessarily the last." The law, in effect, permitted the Solicitor General to file the informations within six months. And statutes permitting officers to perform their duties within certain periods of time may not surely be declared invalid delegations of legislative power.

(*c*) Nor is the position correct that section 19 is retroactive in its operation. It refers to detention after its passage—not before. Incidentally, there is no constitutional objection to retroactive statutes where they relate, to remedies or procedure.[3]

The argument is advanced that when he was arrested, (May, 1945), article 125 of the Revised Penal Code was in force, and petitioner could have asked for release after six hours and, therefore, Commonwealth Act No. 682 that

[3] *See* 16 C. J. S., p. 865 *et seq.*

takes away that right is *ex post facto*, retroactive and fundamentally objectionable. The premises are incorrect. In May, 1945, *he could not have asked* for release after six hours. In other words, he would not have been discharged from custody. (Raquiza *vs.* Bradford, *supra*), article 125 of the Revised Penal Code was in force, it is true; but not as to him. The laws of the Commonwealth were revived in Camarines Sur by operation of General MacArthur's proclamation of October 23, 1944, upon its liberation from enemy control; but subject to his reservation to hold active collaborationists in restraint "for the duration of the war." So, persons apprehended under that directive, for treasonable collaboration, could not necessarily invoke the benefits of article 125 of the Revised Penal Code.

Undoubtedly the Legislature could validly repeal section 125 of the Revised Penal Code. Had it done so, herein petitioner would have no ground to protest on constitutional principles, as he could claim no vested right to the continued enforcement of said section.[4] Therefore, *a fortiori* he may not complain, if, instead of repealing that section, our law-making body merely suspended its operation for a definite period of time. Should he counter that such repeal or suspension must be general to be valid, he will be referred to the preceding considerations regarding classification and the equal protection of the laws.

Wherefore, we perceive no irreconcilable conflict between the Constitution and the challenged portions of section 19 of Commonwealth Act No. 682.

The other features of the People's Court Act which are the subject of denunciation by petitioner do not, in our opinion, require specific elucidation at this time, because he has not as yet been haled into that court, and the issues appear to have no important or necessary connection with his current deprivation of liberty.[5]

The petition for the writ of habeas corpus will be denied. With costs.

Moran, C. J., Jaranilla, Feria, De Joya, Pablo, Hilado, and *Briones, JJ.*, concur.

OZAETA, *J.*, with whom concurs PARÁS, *J.*, concurring in the result:

I concur with the majority in upholding the constitutionality of section 19 of the People's Court Act. In the view I held in the Raquiza case the detention of the petitioner by the military authorities was illegal for lack of due process. But the same thing cannot be said as to his present detention by the respondent Director of Pri-

[4] *See* 16 C. J. S. section 223.

[5] Yangco *vs.* Board of Public Utility Commissioners (36 Phil., 120).

sons, especially now that an information for treason has been filed against him.

PERFECTO, *J.*, dissenting:

On or about May 6, 1945, petitioner was arrested by the C.I.C., United States Army, Camarines Sur. On September 6, 1945 he was turned over to the Commonwealth Government by the United States Army and since that date he remained in prison under the personal custody of the respondent Director of Prisons, and now he comes before us complaining that his arrest and detention are illegal and in violation of many of his constitutional rights, in that: "(*a*) He was arrested and detained without a lawful warrant of arrest. (*See* Constitution, Article III, section 3.) (*b*) No information or charges has been lodged against him, informing him to the nature and cause of his arrest. (*See* Constitution, Article III, section 17.) (*c*) He was not given an opportunity to confront the witnesses who caused his arrest and detention. (*See* Constitution, Article III, section 17.) (*d*) He was not accorded the benefit of compulsory process to secure the attendance of witnesses in his behalf. (*See* Constitution, Article III, section 17.) (*e*) He was and is being denied the right to a prompt, speedy and public trial. (*See* Constitution, Article III, section 17.) (*f*) His arrest and detention was and is without due process of law. (*See* Constitution, Article III, section 15.) (*g*) He was not accorded the equal protection of the laws. (*See* Constitution, Article III, section 1.) (*h*) He was subjected to cruel and unusual punishment. (*See* Constitution, Article III, section 19.) (*i*) He was committed to prison and detained by the respondent under a bill of attainder. (*See* Constitution, Article III, section 11.)"

Petitioner also maintains that the People's Court Act No. 682, under which the respondent herein purports to act, violates not only the spirit but also the letter of the fundamental law in many ways, in that: "(*a*) It constitutes an assault upon the independence of the judiciary. (*See* Tydings–McDuffie Law, section 2, par. [*a*].) (*b*) It deprives the accused of certain rights already acquired at the time of its passage, and therefore is *ex-post facto* in nature. (*See* Constitution, Article III, section 11.) (*c*) It partakes of the nature of a bill of attainder. (*See* Constitution, Article III, section 11.) (*d*) It denies the equal protection of the laws. (*See* Constitution, Article, III, section 1.) (*e*) It provides for cruel and unusual punishment. (*See,* Constitution, Article, III, section 19.) (*f*) It deprives the citizen of his day in court. (*See* Constitution, Article, III, section 21.) (*g*) It constitutes

an unlawful delegation of legislative and executive functions. (*See,* Tydings–McDuffie Law, section 2, par. [*a*].) (*h*) It covers more than one subject matter. (*See* Constitution, Article VI, section 12, par. 1.) (*i*) It authorizes the charging of multifarious crimes in one complaint or information thereby making it impossible to be informed of the real nature and cause of the accusation against the accused. (*See* Constitution, Article, III, section 17.) (*j*) It denies the constitutional right of a person to bail before conviction. (*See* Constitution, Article, III, section 16.)"

Consequently, petitioner prays that Commonwealth Act No. 682 be declared unconstitutional and null and void, that his detention, irrespective of the validity of said act, be declared illegal and in violation of many of his constitutional rights, and that an order be issued for his complete and absolute release.

Respondent answered that, pursuant to the authority of the proclamation issued by the Commander in Chief of the American Armed Forces, Southwest Pacific Area, General Douglas MacArthur, dated December 29, 1944, petitioner was arrested and thereafter detained on May 10, 1945, under a security commitment order, issued by the commanding officer of 904th Counter Intelligence Corps Detachment, United States Army, upon the charge of "active collaboration with the Japanese during the Japanese occupation"; that his subsequent detention as a political prisoner, upon the transfer of his person to the Commonwealth Government by the United States Army, pursuant to the terms of the proclamation issued by General Douglas MacArthur on December 29, 1944, of Executive Order No. 65, issued by the President of the Philippines on September 3, 1945, and pursuant to the provisions of Commonwealth Act No. 682, approved on September 25, 1945, was a mere logical sequence of his previous commitment and hence equally valid and legal.

Respondent alleges also that petitioner has not as yet availed of the benefits of section 19 of Commonwealth Act No. 682, which confers upon political prisoners the privilege of securing their release on bail upon proper application therefor with the People's Court; that Commonwealth Act No. 682 does not trench upon, nor contravene any of the provisions of the Constitution; that it is not *ex post facto* in nature in that it suspends, in the interests of national security, the provision of article 125 of the Revised Penal Code for a period of not more than six months, which is fully justified by the practical necessities of the situation, considering the circumstances that there are more than 6,000 political prisoners charged with the

grave crime of treason and other offenses against national security; that said law does not materially impair the substantial rights of the accused to have the question of his guilt determined according to the substantive law existing at the time of the commission of the offense, that it is not a bill of attainder, since it does not inflict punishment without a judicial trial; that it neither deprives the citizen of his day in court, nor it provides for cruel and unusual punishment; that it applies equally and uniformly to all persons similarly situated; that it complies with the constitutional requisites of due process of law as applied in criminal procedure; that it does not contravene the constitutional requirement that the accused must be informed of the nature of the accusation against him; that instead of suppressing or denying the constitutional right of an accused to bail before conviction, said act recognizes and concedes to all accused in section 19 the right to bail, except those charged with capital offenses when evidence of guilt is strong; that the information against the petitioner, charging him with treason upon ten counts was ready for filing in the People's Court even on the date the petition in this proceeding was presented; and that in due deference to this Supreme Court, the filing on said information has been held in abeyance pending the final disposition of this habeas corpus proceeding.

For purposes of this discussion, the discrepancy between petitioner and respondent as to the correct date when petitioner was arrested, May 6 or May 10, cannot affect the merits of the case.

Without a lawful warrant of arrest.—Whether the arrest took place on May 6, 1945, as alleged by petitioner or on May 10, as alleged by respondent, there is absolutely no question that petitioner was arrested without any lawful warrant of arrest.

Section 1: 3 of Article III of the Constitution provides that "no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." This provision, considered in connection with the provision of section 1: 1 of Article III of the Constitution and section 1: 15 of the same article that no person shall be deprived of liberty or be held to answer for a criminal offense without due process of law, implies necessarily that one of the essential requisites for depriving a person of his liberty, when he is accused of an offense, is the existence of a warrant of arrest issued in accordance with the provisions of the Constitution.

We are of opinion that the arrest of petitioner was executed in flagrant violation of the above-mentioned constitutional provisions.

No information as to any charge.—The Constitution provides that one of the fundamental rights of an accused is "to be informed of the nature and cause of the accusation against him." (Section 1: 17 Article III of the Constitution.)

This constitutional guarantee appears equally to have been violated in petitioner's case.

Respondent's allegation that petitioner is detained because of his active collaboration with the japanese during the japanese occupation does not inform petitioner of the nature and cause of the accusation against him, it appearing that there is no such offense described in any law applicable to petitioner as "active collaboration with the japanese during the japanese régime."

Meeting witnesses face to face.—Petitioner complains that he was not given an opportunity to confront his witnesses who caused his arrest and detention.

The complaint is equally well-taken. There is nothing in the record to show that before, during, or at any time after his arrest, petitioner has ever been accorded the opportunity of meeting the witnesses "face to face" as provided in section 1: 17 of Article III of the Constitution.

Attendance of witnesses in his behalf.—Petitioner complains he was not accorded of the benefit of compulsory process to secure the attendance of witnesses in his behalf as provided in section 1: 17 of Article III of the Constitution. This allegation has not been disputed.

We have, therefore, here another flagrant violation of a constitutional right of petitioner.

Speedy and public trial.—Petitioner invokes also his constitutional right to "have a speedy and public trial" as provided in section 1: 17 of Article III of the Constitution.

There is absolutely no question that this constitutional right of petitioner has been equally violated.

Equal protection of the laws.—Petitioner complains that he was not accorded equal protection of the laws as provided in section 1: 1 of Article III of the Constitution.

Petitioner's allegation is equally well-founded, there being no question as to the fact that he was and he is being deprived of several of his fundamental rights under the Constitution without any legal process.

Cruel and unusual punishment.—Petitioner complains that he was subjected to cruel and unusual punishment in violation of section 1: 19 of Article III of the Constitution.

There is no question that petitioner is being deprived of his liberty without any information or complaint charging him of any specified offense under the laws of the land.

So it appears that he is being, in effect, subjected to the punishment of deprivation of liberty for almost one year, without any definite information as to when will it end. This means that he is being subjected to imprisonment for an indefinite term. It is certainly a cruel and unusual punishment, not only because it is not authorized by any law of the land, but because it is meted out to petitioner for no specific offense at all. The violation of section 1: 19 of Article III of the Constitution is indispensable.

Petitioner complains that those responsible for his detention appear to have never heard of such trifles as those contained in the Bill of Rights and even if they did, they contend that the Constitution was never meant for the "untouchables" known in the contemporary Philippine history as "collaborators," and that no one can imagine a more glaring case for the granting of a writ of habeas corpus than that of the petitioner, it appearing that the circumstances of his arrest are self-demonstrative of the most scandalous violation of the Bill of Rights ever perpetrated under the American flag.

Petitioner, as has been shown, appears well supported in his complaint.

Now, as one of the questions raised in this case, let us determine the validity of that portion of section 19 of Commonwealth Act No. 682, an act creating the People's Court, which provides as follows:

"* * * *And provided, further,* That in the interest of public security, the provisions of article one hundred twenty-five of the Revised Penal Code, as amended, shall be deemed, as they are hereby, suspended, insofar as the aforesaid political prisoners are concerned, until the filing of the corresponding information with the People's Court, but the period of suspension shall not be more than six (6) months from the formal delivery of said political prisoners by the Commander in Chief of the Armed Forces of the United States in the Philippines to the Commonwealth Government."

The provision of the Revised Penal Code which has been virtually suspended by this law is:

"ART. 125. *Delay in the delivery of detained persons to the proper judicial authorities.*—The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of six hours. (As amended by Act No. 3940.)"

The pertinent provisions of our fundamental law which limit the powers of the legislative branch of our government in the enactment of laws are as follows:

"ART. III—BILL OF RIGHTS

"Section 1. (1) No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

* * * * * * *

"(15) No person shall be held to answer for a criminal offense without due process of law.

* * * * * * *

"(17) In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf."

"Development of the Doctrine of due process of law

"Though the words 'due process of law' have not a long history, the doctrine implied by them has a history in Anglo-American law which extends for more than seven hundred years—back, indeed, to the signing of Magna Charta. And yet, notwithstanding this long period during which countless opportunities have presented themselves for its application and judicial definition, the doctrine has not yet received a statement in such a form that its specific applications can, in all cases, be determined. This failure has been due, not to any lack of judicial effort or acumen, but to the very nature of the doctrine which, asserting a fundamental principle of justice rather than a specific rule of law, is not susceptible of more than general statement. The result is, that the meaning of the phrase has to be sought in the history of its specific applications, and, as the variety of these possible applications is infinite, it will probably never be possible to say that the full content of that meaning has been determined. In Twining *vs.* New Jersey (211 U. S., 78), we find the court saying: 'Few phrases in the law are so elusive of exact apprehension as this. This court has always declined to give a comprehensive definition of it, and has preferred that its full meaning should be gradually ascertained by the process of inclusion and exclusion in the course of the decisions of cases as they arise.' So also in Davidson *vs.* New Orleans (96 U. S., 97), the court said: 'to define what it is for a state to deprive a person of life, liberty or property without due process of law, in terms which would cover every exercise of power thus forbidden to the state, and exclude those which are not, no more useful construction could be furnished by this or any other court to any part of the fundamental law.' and, later in the same opinion: 'There is wisdom in the ascertaining of the intent and application of such an important phrase in the Federal Constitution by the gradual process of judicial inclusion and exclusion as the cases presented for decision shall require, with the reasoning on which such discussions may be founded."

"In Holden *vs.* Hardy (169 U. S., 366) the court said: 'This court has never attempted to define with precision the words 'due process of law.' It is sufficient to say that there are certain immutable

principles of justice which inhere in the very idea of free government which no member of the Union may disregard.'

"It would appear, then, that a complete knowledge of the meaning of the doctrine of due process of law in American constitutional jurisprudence can be obtained only by a study of every case in which its application has been sought. * * *"

"*Per Legem Terræ.*

"The historical antecedents of the phrase 'due process of law' may be clearly traced back to the expression *per legem terrae* as it occurs in the Charter wrung by the Barons from King John. The 39th chapter of that document provides that 'no freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way destroyed; nor shall we go upon him nor send upon him, but by the lawful judgment of his peers or by the law of the land' (*per legem terrae*). In the later re-issues and reaffirmations of this charter by Henry III, in 1216, 1217 and 1225, this provision was repeated, with, however, in the issues of 1217 and 1225, the addition of the words after disseized, 'of his freehold, or liberties or free customs,' (*de libero tenemento suo vel libertalibus, vel liberis consuetudinibus suis*).

"The words of Magna Charta, *per legem terrae*, probably had at this time the technical meaning that no civil or criminal plea should be decided against a freeman until he had been given the opportunity to furnish the customary 'proof' which the law, as it then stood, recognized and permitted him to offer. This proof might be by battle, or ordeal, or by compurgation. Whatever form it might assume it was technically known as a law (*lex*), that is, as a test according to which the defendant's claim was to be upheld or denied. (McKechnie, *Magna Charta*, 102, 441, 442; Thayer, *Evidence*, 200; Bigelow, *History of Procedure*, 155. Thayer and Bigelow are cited by McKechnie.)

"In the various petitions of the Parliament in the Fourteenth Century against the arbitrary acts of the King's Council, the guaranty of the law of the land was appealed to, and these petitions, when assented to by the King, became, of course, statutes of the realm. Thus, in 1331, in Stat. 5 Edw. III, C. 9, it was declared that "no man from henceforth shall be attacked by any accusation, nor forejudged of life or limb, nor his lands, tenements, goods nor chattels seized into the King's hands against the form of the Great Charter and the law of the land.' So again, in 1351, in Stat. 25, Edw. III, C. 4, it was declared that 'from henceforth none shall be taken by petition or suggestion made to our lord the King or his Council, unless it be by presentment or indictment of his good and lawful people of the same neighborhood, where such deeds be done in due manner, or by process made by writ original at the common law, nor that none be ousted of his franchises, nor of his household, unless he be fully brought in to answer and forejudged of the same by the courts of the law.' Still gain, in 1355, in Stat. 28, Edw. III, C. 3, there was a substantially similar provision, and there, for what would appear to be the first time, we have the modern phrase employed. 'No man,' it was declared, "of what state or condition soever he be, shall be put out of his lands, or tenements, nor taken, nor imprisoned, nor indicted, nor put to death, without he be brought in to answer by due process of law." (*Par due process de lei.*) (Cf. McGehee, *Due Process of Law*, Chap. 1.)

"It is thus apparent that in these petitions and statutes of Edward III, the phrases 'due process of law' and 'the law of the land' had come to be synonymous, both indicating, as the substance of

the petitions shows, that the guaranty insisted upon was that persons should not be imprisoned except upon due indictment, or without an opportunity on their parts to test the legality of their arrest and detention, and that their property should not be taken except in proceedings conducted in due form in which fair opportunity was offered to the one claiming ownership or right to possession to appear and show cause, if any, why the seizure should not be made.

"The Petition of Right of 1628, approved by Charles I, recited various arbitrary acts complained of, and appealed to 'the laws and franchises of the realm.' Coke, in his Second Institute, defined the phrase *per legem terrae* as meaning "the common law, statute law or custom of England,' and then declared: 'For the true sense and exposition of these words, see the Statute 37, Edw. III, C. 8, where the words 'by the law of the land' are rendered 'without due process of law', for there it is said, though it be contained in the Great Charter, that no man be taken, imprisoned, or put out of his freehold without due process of law; that is by indictment or presentment of good and lawful men where such deeds be done or by writ original of the common law.'

"It was in this sense as employed in the statutes of Edward III and by Coke, and as relating solely to matters of procedure, that the phrase due process of law was introduced into American law.

(3 Willoughby on the Constitution of the United States 2d. ed., sections 1113, 1114, pp. 1685, 1686.)

"English and American use of the phrase "due process of law contrasted.

"Coming now to American practice we find that the exact phrase 'due process of law' was not employed in any of the eleven State constitutions adopted prior to the Federal Constitution, but that it early found expression in substance, if not in very words, in those instruments. The very words do, however, appear in the Declaration of Rights of the State of New York, adopted in 1777, and in one of the amendments proposed by that State to the Federal Constitution as drafted by the Convention of 1787. The first appearance of the express provision in an American instrument of government is in the Fifth Article of Amendment to the Constitution of the United States, adopted in 1791. That amendment provides, *inter alia*, that "nor shall any person * * * be deprived of life, liberty or property, without due process of law.' The Federal imposition of this requirement upon the States did not come until 1868 when the Fourteenth Amendment was ratified.

"It is a very remarkable fact that not until our written Constitution was more than half a century old did the phrase receive an interpretation and application which approximates that which it has today, and not, indeed, until a hundred years had passed away was resort had to it as the usual device of those disapproving of the acts of their legislatures. This, however, is no doubt in a measure explainable by the fact that not until the increased complexity of social and industrial life had led, upon the one hand, to the use by the State and Federal Governments of administrative process more or less summary in character and, upon the other hand, to a marked increase in the regulative control of law over private acts and the use of public property, did there appear the necessity for the appeal to this limitation by those who conceived themselves injured by the exercise of such administrative powers or by the enforcement of these legislative regulations.

"In the most important respects the application in America of the requirement of due process of law has differed from that which it

had received in England prior to 1776, and which, indeed, it still receives in that country. These are: (1) that, in the United States, it operates as a limitation upon the legislative as well as upon the executive branch of the government, and (2) that it relates to substantive as well as to procedural rights. This second application is, however, one which, as we shall see, was not at first developed.

"Before the requirement could be recognized as one imposed upon the legislature there had first to be established the doctrine that the courts, when called upon to apply the enactments of the law-making branch of the government of which they themselves constitute the judiciary, may declare the invalidity of enactments which, in their judgment, conflict with the provisions of the written Constitution. This doctrine, as is well known, was not accepted without protest, but may be said to have received final and decisive sanction as a fundamental principle of American constitutional jurisprudence in the great opinion of Marshall, rendered in 1803, in the case of Marbury *vs.* Madison (1 Cr., 137).

"That, as contrasted with English practice, the requirement of due process of law was a limitation upon the legislative power, so far, at least, as to render void an enactment authorizing a taking of life, liberty or property by an arbitrary or otherwise defective procedure, seems early to have been held, the argument being founded upon the obvious fact that, as contrasted with the English constitutional documents, American written instruments if government and their accompanying Bills of Rights have for their primary aim the delimitation of the powers of all the departments of government—of the legislative as well as the executive and judicial. (3 Willoughby, 2nd ed., section 1115, p. 1689.)

"The possibility, under a popular form of government, of oppression in the form of laws enacted by their own representatives, does not appear to have been keenly felt by the people. So far, however, as it was apprehended, the early view seems to have been that the restraints of natural law would be operative, according to the doctrine that the law-making branch of every government is inherently without the power arbitrarily and oppressively to invade the sphere of private rights of persons and property. This natural law doctrine, though it can never be said to have gained a definite establishment, even for a time, nevertheless received frequent *obiter* assertion, and its influence was for a long time seen in discussions of our higher courts. Thus, for example, in 1875, in Loan Association *vs.* Topeka the court said: 'It must be conceded that there are such rights in every free government beyond the control of the state—a government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power is, after all, but a despotism * * *.' The theory of our governments, state and municipal, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power which grow out of the essential nature of all free governments—implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D, or which should enact that the homestead now owned by A

should henceforth be the property of B. (3 Willoughby, United States Constitutional Law, section 1116, pp. 1692, 1693.)

"There are certain general principles, well settled, however, which narrow the field of discussion, and may serve as helps to correct conclusions. These principles grow out of the proposition universally accepted by American courts on the authority of Coke, that the words 'due process of law' are equivalent in meaning to the words 'law of the land,' contained in that chapter of *Magna Charta* which provides that 'no freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or any wise destroyed; nor shall we go upon him, nor send upon him, but by lawful judgment of his peers, or by the law of the land.'

"In Hagar *vs.* Reclamation Dist. it was said: 'It is sufficient to say that by due process of law is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by law, it must be adapted to the end to be attained, and whenever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justness of the judgment sought. The clause, therefore, means that there can be no proceeding against life, liberty, or property which may result in deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

"By the law of the land,' said Webster in a much quoted paragraph, 'is most clearly intended the general law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty and property and immunities under the protection of general rules which govern society. Everything which may pass under the form of an enactment is not law of the land'. (3 Willoughby, 2nd ed., pp. 1707, 1709.)

"The fact that the requirement as to the due process includes, to a very considerable extent at least, the guarantee of equal protection of the laws, is especially shown in the opinion of the court in Smyth *vs.* Ames where it is said: 'The equal protection of the laws, which by the Fourteenth Amendment no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of an individual is, without compensation, wrested from him for the benefit of another, or of the public.'

"The possible distinction between the two prohibitions we find touched upon by Chief Justice Taft in his opinion in Truax *vs.* Corrigan. He there said: 'It may be that they (the two prohibitions) overlap, that a violation of one may involve at times the violation of the other, but the spheres of the protection they offer are not conterminous * * * The due process clause * * * of course tends to secure equality of law in the sense that it makes a required minimum of protection for everyone's right of life, liberty, and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. * * *. But the framers and adopters of this (Fourteenth) Amendment were not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty. The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other. It sought an equality of treatment of all persons, even though all enjoyed

the protection of due process.' Thus, in the instant case, the Chief Justice pointed out that the State statute under examination which prohibited interference by injunctions in disputes between employers and employees concerning terms or conditions of employment resulted in the recognition of one set of actions against ordinary tort feasors and another set against tort feasors in labor disputes. The contention that no one has a vested right to injunctive relief, he said, did not meet the objection that the granting of equitable relief to one man or set of men, and denying it to others under like circumstances and in the same jurisdiction was a denial of the equal protection of the laws.'

"In Hayes *vs.* Missouri the court said of the Fourteenth Amendment that it 'does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subject to such legislation shall be treated alike, under like circumstances and conditions both in the privileges conferred and in the liabilities imposed.' Having quoted this statement, Chief Justice Taft in Truax *vs.* Corrigan added: 'Indeed, protection is not protection unless it does so. Immunity granted to a class, however limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class.'

"From what has been said it is clear that, in many cases, laws which have been held invalid as denying due process of law might also have been so held as denying equal protection of the laws, or *vice versa*, and that, in fact, in not a few cases the courts have referred to both prohibitions leaving it uncertain which prohibition was deemed the most pertinent and potent in the premises.

"One of the best general statements of the scope and intent of the provision for the equal protection of the laws is that given by Justice Field in his opinion in Barbier *vs.* Connolly, in which, speaking for the court, he said:

"The Fourteenth Amendment in declaring that no State 'shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' unduobtedly intended, not only that there should be no arbitrary spoliation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits by anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one that such as is prescribed to all for like offenses. (3 Willoughby, 2nd ed., pp. 1928, 1930.)

"The legislature may suspend the operation of the general laws of the State, but when it does so the suspension must be general, and cannot be made for individual cases or for particular localities. Privileges may be granted to particular individuals when by so doing the rights of others are not interferred with; disabilities may be removed; the legislature as *parens patriae*, when not forbidden,

may grant authority to the guardians or trustees of incompetent persons to exercise a statutory control over their estates for their assistance, comfort, or support, or for the discharge of legal or equitable liens upon their property; but every one has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free governments. Those make the laws "are to govern by promulgated, established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at plough." This is a maxim constitutional law, and by it we may test the authority and binding force of legislative enactments. (Cooley's Constitutional Limitations, 7th ed., pp. 558, 559.)

"Equality of rights, privileges, and capacities unquestionably should be the aim of the law; and if special privileges are granted, or special burdens or restrictions imposed in any case, it must be presumed that the legislature designed to depart as little as possible from this fundamental maxim of government.

"The State, it is to be presumed, has no favors to bestow, and designs to inflict no arbitrary deprivation of rights. Special privileges are always obnoxious, and discriminations against persons or classes are still more so; and, as a rule of construction, it is to be presumed they were probably not contemplated or designed. (Cooley's Constitutional Limitations, 7th ed., pp. 562, 563.)

"It is usual for state constitutions and statutes to provide for the accused a speedy and public trial. By a speedy trial is meant one that can be had as soon after indictment as the prosecution can with reasonable diligence prepare for, regard being had to the terms of court; a trial conducted according to fixed rules, regulations, and proceedings of law, free from vexatious, capricious, and oppressive delays. The term 'speedy' as thus used, being a word of indeterminate meaning, permits legislative definition to some extent; and the authorities uniformly hold that such statutes are enacted for the purpose of enforcing the constitutional right, and that they constitute a legislative construction or definition of the constitutional provision, and must be construed fairly to the accomplishment of that end. Any act of the legislature which infringes the constitutional provision is necessarily nugatory. (16 C. J., pp. 439, 440.)

"*The purpose of the statute* (1) is to prevent continued incarceration without opportunity to the accused, within a reasonable time, to meet the proofs upon which the charge is based.' State *vs.* Miller (72 Wash., 154, 159, 163; 129 P., 1100). (2) 'The constitutional privilege of a speedy trial was intended to prevent an arbitrary, indefinite imprisonment, without any opportunity to the accused to face his accusers in a public trial. It was never intended as furnishing a technical means for escaping trial." State *vs.* Miller (*supra*). (3) "The sole object and purpose of all the laws from first to last, was to ensure a speedy trial to the accused, and to guard against a protracted imprisonment or harassment by a criminal prosecution, and object but little if any less interesting to the public than to him.' Com. *vs.* Adcock (8 Graft., [49 Va.] 661, 680). (Quote Denham *vs.* Robinson (72 W. [Va.], 243, 255; 77 SE., 970; 45 LRANS, 1123; Ann Cas. 1915D, 997.) *See also Ex. parte* Santee (2 Va. Cas. [4 Va.] 363, 365), where the court said: 'That whilst it has an eye to the solemn duty of protecting the public against the wrongs of those who are regardless of their obliga-

tions to society, and to the delays which the Commonwealth may unavoidably encounter in prosecuting breaches of these obligations, it is studious to shield the accused from the consequences of the latches of those to whom the duty of conducting the prosecution may have been assigned. The public has rights as well as the accused, and one of the first of these is, that of redressing, or punishing their wrongs. It would not seem reasonable that this right, so necessary for the preservation of society, should be forfeited without its default'.

"This provision of our constitutions must receive a reasonable interpretation. It cannot be held to mean that in all the possible vicissitudes of human affairs, a person who is accused of a crime shall have a speedy and public trial in due form of law, because there may be times when the civil administration will be suspended by the force of uncontrollable circumstances. This constitutional provision was adopted upon general considerations growing out of the experience of past times, and was intended to prevent the government from oppressing the citizen by holding criminal prosecutions suspended over him for an indefinite time; and it was also intended to prevent delays in the customary administration of justice, by imposing upon the judicial tribunals an obligation to proceed with reasonable dispatch in the trial of criminal accusation.' *Ex. parte* Turman (26 Tex., 708, 710; 84 AmD, 598). (16 C. J., 440–footnote.)

"In any criminal case, the person accused may not be deprive' of life, liberty, or property except by due process of law, even though he is guilty. The law by which the question of due process is determined, is the law of the jurisdiction where the offense was committed and the trial is had.

"Due process of law in a criminal case requires a law creating or defining the offense, a court of competent jurisdiction, accusation in due form, notice and opportunity to defend, trial before an impartial judge or judge and jury according to established criminal procedure, and a right to be discharged unless found guilty. * * *.

"While the freedom of the state and federal governments to control and regulate the procedure of their courts for the prosecution of criminal offenses is limited by the requirement of due process of law, and the procedure must not work a denial of fundamental rights of accused included within the conception of due process, no particular form or method of procedure in criminal cases is required by the guaranty of due process so long as accused has due and sufficient notice of the charge or accusation and an adequate opportunity to be heard in defense. (16 C. J. S., pp. 1171–1173.)

"An emergency existing does not increase constitutional power or diminish constitutional restrictions; hence while emergency legislation may temporarily limit assailable remedies, it does not contemplate the permanent denial of due process. (16 C. J. S., p. 1157.)

"Although a law is fair on its face and impartial in appearance, yet, if it is applied and administered with an evil eye and unequal hand, so as to make unjust and illegal discrimination, it is within the prohibition of the Federal Constitution. Chy Lung *vs.* Freeman (92 U. S., 275; 23 Law. ed., 550.)

"The action of a state through its officers charged with the administration of a law fair in appearance may be of such a character as to constitute a denial of the equal protection of the laws. Bailey *vs.* Alabama (219 U. S., 219; 31 Sup. Ct. Rep., 145; 55 Law. ed., 191).

"The clause 'due process of law' means that there can be no proceeding against life, liberty or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights." Turpin *vs.* Lemon (187 U. S., 51; 23 Sup. Ct. Rep., 20; 47 Law. ed., 70).

"CRIMINAL ACCUSATIONS

"Perhaps the most important of the protections to personal liberty consist in the mode of trial which is secured to every person accused of crime. At the common law, accusations of felony were made in the form of an indictment by a grand jury; and this process is still retained in many of the States, while others have substituted in its stead an information filed by the prosecuting officer of the State or county. The mode of investigating the facts, however, is the same in all; and this is through a trial by jury, surrounded by certain safeguards which are a well understood part of the system, and which the government cannot dispense with.

"First, we may mention that the humanity of our law always presumes an accused party innocent until he is proved to be guilty. This is a presumption which attends all the proceedings against him, from their initiation until they result in a verdict, which either finds the party guilty or converts the presumption of innocence into an adjudged fact.

"If there were any made short of confinement which would, with reasonable certainty, insure the attendance of the accused to answer the accusation, it would not be justifiable to inflict upon him that indignity, when the effect is to subject him, in a greater or less degree, to the punishment of a guilty person, while as yet it is not determined that he has committed any crime. If the punishment on conviction cannot exceed in severity the forfeiture of a large sum of money, then it is reasonable to suppose that such a sum of money, or an agreement by responsible parties to pay it to the government in case the accused should fail to appear, would be sufficient security for his attendance; and therefore, at the common law, it was customary to take security of this character in all cases of misdemeanor; one or more friends of the accused undertaking for his appearance for trial, and agreeing that a certain sum of money should be levied of their goods and chattels, lands and tenements, if he made default. * * *. The presumption of innocence is an absolute protection against conviction and punishment, except either, first on confession in open court; or, second, on proof which places the guilt beyond any reasonable doubt. Formerly, if a prisoner arraigned for felony stood mute wilfully, and refused to plead, a terrible mode was resorted to for the purpose of compelling him to do so; and this might even end in his death: but a more merciful proceeding is now substituted; the court entering a plea of not guilty for a party who, for any reason, fails to plead for himself.

"Again, it is required that the trial be speedy; and here also the injunction is addressed to the sense of justice and sound judgment of the court. In this country, where officers are specially appointed or elected to represent the people in these prosecutions, their position gives them an immense power for oppression; and it is to be feared they do not always sufficiently appreciate the responsibility, and wield the power with due regard to the legal rights and privileges of the accused. When a person charged with crime is willing to proceed at once to trial, no delay on the part of the prosecution is reasonable, except only that which is necessary for

proper preparation and to secure the attendance of witnesses. Very much, however, must be left to the judgment of the prosecuting officer in these cases; and the court would not compel the government to proceed to trial at the first term after indictment found or information filed, if the officer who represents it should state, under the responsibility of his official oath, that he was not and could not be ready at that time. But further delay would not generally be allowed without a more specific showing of the causes which prevent the State proceeding to trial, including the names of the witnesses, the steps taken to procure them, and the facts expected to be proved by them, in order that the court might judge of the reasonableness of the application, and that the prisoner, might, if he saw fit to take that course, secure an immediate trial by admitting that the witnesses, if present, would testify to the facts which the prosecution have claimed could be proven by them. (Cooley's Constitutional Limitations, 7th ed., pp. 436–441).

"Section 19 of our Bill of Rights provides that "no citizen of this state shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.'

" 'Law of the land' is interpreted to mean a general public law, operating equally upon every member of the community." (*Re* Jilz, 3 Mo. App., 246.)

"No state shall * * * deny to any person within its jurisdiction the equal protection of the laws;" "nor shall any state deprive any person of life, liberty, or property without due process of law." * * *. Constitution section 1, article 14.

Due process of law under the 14th Amendment and the equal protection of the law are secured if the law operates on all alike and does not subject the individual to the arbitrary exercise of the powers of government. Duncan *vs.* Missouri (152 U. S., 382; 38 Law. ed., 487; 14 Sup. Ct. Rep., 570); Hurtado *vs.* California (110 U. S., 535; 28 Law. ed., 232; 4 Sup. Ct. Rep., 111, 292.)

"Do laws operate equally upon the citizens of the Commonwealth of Texas which will imprison under like verdicts one man for a month and another for six months? Manifestly not.

"Section 3 of the Bill of Rights to the State Constitution provides: 'All freemen, when they form a social compact, have equal rights.'

"A law which makes different punishments follow the same identical criminal acts in the different political subdivisions of Texas violates both our state and Federal Constitutions. It fails to accord equal rights and equal protection of the law, and a conviction under it is not in due course of the 'law of the land.' (*Re* Jilz, 3 Mo. App., 246; *Re* H. F. Millon, 16 Idaho, 737; 22 L. R. A. [N. S.], 1123; 102 Pac., 374, and Jackson *vs.* State, 55 Tex. Crim. Rep., 557; 117 S. W., 818), are cited in support of our view in their reasoning.

"We think the principles announced in the case of *Ex parte* Jones (106 Tex. Crim. Rep., 185; 290 S. W., 177), apply in some degree to the instant case. It was there held that article 793, Code Crim. Proc., superseded and controlled an ordinance of the city of Dallas which allowed only 50 cents per day to be credited upon the fine of a convict for labor performed. Provisions similar to those quoted in our state constitution have been a part of Anglo-Saxon jurisprudence since there was wrung from the unwilling hands of King John at Runnymede in 1215 the Magna Charta, which itself provides that a freeman shall not be passed upon or condemned but 'by the lawful judgment of his peers and the law of the land.' 'Law of the land" has the same legal meaning as 'due process of law,' and one of its accepted meanings is that quoted above. (*Re* Jilz, 3 Mo.

App. 243; 3 Words & Phrases, pp. 2227–2232). (*Ex parte* Sizemore, 59 A. L. R., Annotated, pp. 430, 432.)

"And in *Re* Jilz ([1877], 3 Mo. App., 243), an act of the legislature of Missouri, which, by limiting the power of a court established in a certain county to assess punishments, varied the penalties for crimes committed therein from those fixed by the general law for the whole state, was held to be unconstitutional in so far as it had that effect, the court saying: 'A law which should prescribe death as the punishment of murder in the county, and imprisonment as the penalty for the same crime in other parts of the state, would be void, because not operating equally upon all inhabitants of the state. The general law applicable to the state prescribes, as the punishment for the offense for which the petitioner was convicted, imprisonment in the county jail not exceeding one year, or fine not exceeding $500, or both such fine and imprisonment. * * *. A law prescribing a different punishment from this in St. Louis county is clearly unconstitutional. It follows that so much of the act referred to, establishing the court of criminal correction, as limits the punishment for this misdemeanor in St. Louis county to imprisonment for six months, is void.'

So, in State *vs.* Buchardt (Mo.) *supra.*, where the same legislative act was in question, the court says: 'Under our Constitution, it is not permissible to punish the same offense or violation of some public or general law by one species of punishment in one locality, and by a different or more heavy punishment in other localities in the state. A law inflicting such different penalties for the perpetration of any given crime cannot bear the test of judicial examination.'

"And, in State *vs.* Gregori ([1928],—Mo.—; 2 S. W. [2d], 747), an act of the legislature which made children seventeen years of age in counties of 50,000 population or more subject to the juvenile court act, while in counties of less than 50,000 population children seventeen years of age were not subject to the juvenile court act, but were subject to full criminal responsibility, was held unconstitutional as denying equal protection of the laws; the court stating that it was the general doctrine that the law relative to those who might be charged with and convicted of crime, as well as to the punishment to be inflicted therefor, should operate equally upon every citizen or inhabitant of the state.

"And, in State *vs.* Fowler ([1927], 193 N. C., 290; 136 S. E., 709), an act of the North Carolina legislature, applicable to five counties of the state only, which imposed as punishment for a specified offense a fine only, while a statute applicable to the whole state imposed a fine or imprisonment, was held to be unconstitutional under both the Federal and State Constitutions as a denial of the equal protection of the laws. The court says: 'But the statute under consideration cannot be sustained on the ground that it was enacted in the exercise of the police power. The question is whether it shall supersede 'the law of the land'—the general public law which was designed to operate without exception or partiality throughout the state. It is needful to remember that indictment was drafted under the general law, and that the decisive question is whether offenders in the five counties referred to may lawfully be exempted from the punishment prescribed by the general law; whether they shall be subject only to a fine when the officers in ninety-five other counties may be punished by imprisonment. In our judgment this part of section 2 is neither equal protection of the laws nor the protection of equal laws. * * *. It is the grant of a special exemption from punishment or on

exclusive or separate privilege which is forbidden by the cited provision. * * *. The principle of uniformity in the operation of a general law extends to the punishment, and denounces as arbitrary and unreasonable the imposition in one county of any kind of punishment which is different from that which is prescribed under the general law to all who may be guilty of the same offense. It follows that the provision limiting the punishment for the first offense to a fine must be regarded as an arbitrary class distinction which cannot be sustained because forbidden by the fundamental law, and the judgment which was pronounced by authority of the general law must be upheld." (Annotation, 59 A. L. R., Annotated, p. 434.)

"Bill of attainder were prohibited to be passed, either by the Congress or by the legislatures of the several States. Attainder, in a strict sense, means an extinction of civil and political rights and capacities; and at the common law it followed, as of course, on conviction and sentence to death for treason; and, in greater or less degree, on conviction and sentence for the different classes of felony.

"A bill of attainder was legislative conviction for alleged crime, with judgment of death. Such convictions have not been uncommon under other governments, and the power to pass these bills has been exercised by the Parliament of England at some periods in its history, under the most oppressive and unjustifiable circumstances, greatly aggravated by an arbitrary course of procedure, which had few of the incidents of a judicial investigation into alleged crime. For some time before the American Revolution, however, no one had attempted to defend it as a legitimate exercise of power; and if it would be unjustifiable anywhere, there were many reasons why it would be specially obnoxious under a free government, and why consequently its prohibition, under the existing circumstances of our country, would be a matter of more than ordinary importance. Every one must concede that a legislative body, form its numbers and organization, and from the very intimate dependence of its members upon the people, which renders them liable to be peculiarly susceptible to popular clamor, it not properly constituted to try with coolness, caution, and impartiality a criminal charge, especially in those cases in which the popular feeling is strongly excited—the very class of cases most like to be prosecuted by this mode. And although it would be conceded that, if such bills were allowable, they should properly be presented only for offenses against the general laws of the land, and be proceeded with on the same full opportunity for investigation and defense which is afforded in the courts of the common law, yet it was remembered that in practice they were often resorted to because an obnoxious person was not subject to punishment under the general law, or because, in proceeding against him by this mode, some rule of the common law requiring a particular species of degree of evidence might be evaded, and a conviction secured on proofs that a jury would not be suffered to accept as overcoming the legal presumption of innocence. Whether the accused should necessarily be served with process; what degree or species of evidence should be required; whether the rules of law should be followed, either in determining what constituted a crime, or in dealing with the accused after conviction—were all questions which would necessarily address themselves to the legislative discretion and sense of justice; and the very qualities which are essential in a court to protect individuals on trial before them against popular clamor, or the hate of those in powers, were precisely those which were likely

to prove weak or wanting in the legislative body at such a time. And what could be more obnoxious in a free government than the exercise of such a power by a popular body, controlled by a mere majority, fresh from the contests of exciting elections, and quite too apt, under the most favorable circumstances, to suspect the motives of their adversaries, and to resort to measures of doubtful propriety to secure party ends?

"Nor were legislative punishments of this severe character the only ones known to parliamentary history; there were others of a milder form, which were only less obnoxious in that the consequences were less terrible. These legislative convictions which imposed punishments less than that of death were called bills of pains and penalties, as distinguished from bills of attainder; but the constitutional provisions we have referred to were undoubtedly aimed at any and every species of legislative punishment for criminal or supposed criminal offences; and the term 'bill of attainder' is used in a generic sense, which would include bills of pains and penalties also.

"The thoughtful reader will not fail to discover, in the acts of the American States during the Revolutionary period, sufficient reason for this constitutional provision, even if the still more monitory history of the English attainders had not been so freshly remembered. Some of these acts provided for the forfeiture of the estates, within the Commonwealth, of those British subjects who had withdrawn from the jurisdiction because not satisfied that grievances existed sufficiently serious to justify the last resort of an oppressed people, or because of other reasons not satisfactory to the existing authorities; and the only investigation provided for was an inquiry into the desertion. Others mentioned particular persons by name, adjudged them guilty of adhering to the enemies of the State, and proceeded to inflict punishment upon them so far as the presence of property within the Commonwealth would enable the government to do so. These were the resorts of a time of extreme peril, and if possible to justify them in a period of revolution, when everything was staked on success, and when the public safety would not permit too much weight to scruples concerning the private rights of those who were not aiding the popular cause, the power to repeat such acts under any conceivable circumstances in which the country could be placed again was felt to be too dangerous to be left in the legislative hands. So far as proceedings had been completed under those acts before the treaty of 1783, by the actual transfer of property, they remained valid and effectual afterwards; but so far as they were then incomplete, they were put an end to by that treaty.

"The conviction of the propriety of this constitutional provision has been so universal, that it has never been questioned, either in legislative bodies or elsewhere. Nevertheless, cases have recently arisen, growing out of the attempt to break up and destroy the government of the United States, in which the Supreme Court of the United States has adjudged certain action of Congress to be in violation of this provision and consequently void. The action referred to was designed to exclude from practice in the United States courts all persons who had taken up arms against the goverment during the recent rebellion, or who had voluntarily given aid and encouragement to its enemies; and the mode adopted to effect the exclusion was to require of all persons, before they should be admitted to the bar or allowed to practice, an oath negativing any such disloyal action. This decision was not at first universally accepted as sound; and the Supreme Courts of West Virginia and of the District of Columbia declined to follow it, insisting that

permission to practise in the courts is not a right, but a privilege, and that the withholding it for any reason of State policy or personal unfitness could not be regarded as the infliction of criminal punishment.

"The Supreme Court of the United States has also, upon the same reasoning, held a clause in the Constitution of Missouri, which, among other things, excluded all priests and clergymen from practising or teaching unless they should first take a similar oath of loyalty, to be void, overruling in so dong a decision of the Supreme Court of that State." (Cooly's Constitutional Limitations, 7th ed., pp. 368–372.)

The legal problem confronting us is characterized by the fact that we have to avoid the misleading effect resulting from the difference between the text and letter of the law and their grammatical sense and effect on one side, and as it is interpreted and applied in actual practice.

Apparently, there is nothing so harmless as the provision of section 19 of Act No. 682, suspending for a period of not more than six months the provision of article 125 of the Revised Penal Code, as amended.

Article 125 of the Revised Penal Code punishes the public officer or employee who "shall detain any person for some legal ground and which fail to deliver such person to the proper judicial authorities within the period of six hours."

Said article has nothing to show that it bears constitutional sanction. It is only a part of the penal laws which are within the full jurisdiction of the legislative power to enact or not to enact. The Philippine Legislature which enacted the Revised Penal Code could have failed to do so without, by that very fact, violating any provision of the Constitution. The succeeding legislative bodies—the unicameral National Assembly and the Congress—may, without question, repeal or suspend article 125 of the Revised Penal Code, as any other article of the same, or even the whole code.

Therefore, as an abstract proposition, as a matter of legal technicality, we believe that there is aboslutely no ground for disputing the power of the legislative body to suspend or even repeal article 125 of the Revised Penal Code.

But the provision is vitiated:

(1) By the fact that it is a class legislation, excluding the political prisoners concerned from the same benefits and protection afforded all other persons by article 125.

(2) By the fact that it is interpreted and applied, not only in a negative sense as a deterrent against public officials or employees bent on encroaching and trampling upon the personal freedom of any person, but as a positive authority to said officers and employees to deprive and continue depriving the political prisoners concerned of

their personal liberty, without due or any legal process of law provided the deprivation of liberty did not exceed six months, but without reckoning the previous many months of illegal detention they had already suffered before their formal transfer to the Commonwealth Government.

For these two radical and incurable defects, section 19 of Act No. 682 runs counter to the Constitution when it prohibits that no person shall be deprived of his liberty without due process of law nor shall any person be denied the equal protection of the laws. (Article III, section 1 (1), Constitution of the Philippines.)

No one can, with candor and fairness, deny the discriminatory character of the provision. If all discriminations are abhorrent under any régime of law and justice, imperatively more in a democracy such as ours, tribunals must be recreant to their duties if they fail to deny validity to such an odious legal measure, conceived, adopted, and unhappily enacted by the legislative power in one of its blundering moods in utter defiance of the fundamental law of the land.

Petitioner points out that in the provision there is an unconstitutional delegation of legislaitve powers, because the power to suspend the provision of article 125 of the Revised Penal Code within the maximum period of six months, in fact, is transferred to the Special Prosecutors' Office, which may shorten or lengthen said suspension by filing the corresponding criminal information at any time it may deem convenient.

The Special Prosecutors' Office may not suspend altogether article 125 of the Revised Penal Code by filing immediately the information. It may suspend it for 10 days, by filing the information within that time. It may suspend it for one month, two months, or three months, by filing the information within the desired time. It may suspend it for a maximum period of six months just by mere inaction, by not filing any information at all. The result is, in fact, to place in the hands of the Special Prosecutors' Office the power to suspend article 125 for any length of time within the maximum period of six months. And what is worst is that the suspension that the Special Prosecutors' Office may decree is individualized, and not of general effect to all the political prisoners concerned, thus making the Special Prosecutors' Office a kind of dictatorship which may dispense its favors and disfavors to individual prisoners under no other test than its convenience and whims.

Evidently, petitioner's complaint is well-taken, giving additional ground for the nullity of the provision in question, the legislative power having been reserved by the Constitution exclusively to Congress.

Lastly, the provision in question appears to legalize the many months of illegal detention already endured by the political prisoners concerned. The legislative power can not legalize illegal detention, much more if that illegal detention has been perpetrated in utter violation of the Bill of Rights of the Constitution.

Petitioner assails the validity of the whole Act No. 682, aside from what has been already said about section 19 thereof, upon the following grounds:

(1) Because it is an *ex post facto* law, violating section 1(11), article III, of the Constitution, petitioner having been deprived of his acquired right to be freed, under penalty to his detainers, within six hours after his detention under article 125 of the Revised Penal Code.

(2) Because section 2 set up a legal trap by which a person, accused in the information of an offense, may be convicted and sentenced for a different one, thus violating his constitutional right "to be informed of the nature and cause of the accusation against him." (Section 1(17), article III, Constitution of the Philippines.)

(3) Because it creates a special court to try cases arising years before its creation, transferring a jurisdiction belonging to courts of first instance to the People's Court, a blunder identical in nature and viciousness to the former practice of shuffling judges of first instance, the judicial rigodon resorted to before to suit certain purposes of the government and which was stopped by Judge Borromeo's courageous defense of the independence of the judiciary, in a leading case before the Supreme Court which made history.

(4) Because the creation of the People's Court is a judicial gerrymandering.

(5) Because the name "People's Court" suggests a political entity, a popular dispenser of political justice, in contrast with the stable, impartial, cultured nature of a judiciary, detached from momentary interests and influences.

(6) Because the self-extinguishing character of the People's Court makes it an agency for special mission, more an agency of the legislature than that of the administration of justice.

(7) Because it disqualifies members of the judiciary who served under the japanese régime.

We cannot but recognize the strength of the objections, specially objections (1), (2) and (7).

But we are not ready to support petitioner's contention that the whole act should be declared null and void, considering that the unconstitutional provisions thereof may be segregated and the remaining portions of the text may stand on their own feet.

Objection (1) adds only another ground to show the unconstitutionality of the provision of section 19, suspending article 125 of the Revised Penal Code; and objection (2) only affects the corresponding provision of section 2 of the act. Objection (7), upon which we have already expressed our opinion in the case of De la Rama *vs.* Director of Prisons (L–263), only affects the provision concerning the disqualification of certain justices of the Supreme Court.

Regarding objections (3), (4), (5), and (6), although they are meritorious, we believe that they are offset by the collegiate character of the newly created court. We are inclined to believe that the main purpose in creating the People's Court was precisely to afford those who will be charged and tried before it a special safeguard, in the fact that more than one judge will have to hear and try a case, to counterbalance the prevailing prejudice in the community against the persons who are accused for having allegedly collaborated with the enemy. For this reason, we are of opinion that the act creating the People's Court must not be invalidated.

But it is our hope that its creation will not set a precedent that will sanction a wrong principle. Generally speaking, the creation of temporary tribunals to administer justice in a specifically pro-determined existing cases is contrary to the nature and character of judicial functions and the purposes of the administration of justice, which must be characterized by the independence of judicial officers, independence that cannot be secured without guaranteeing the stability of tenure of office.

Judges are not supposed to decide on what may appear right or wrong in the evanescent moment when the voice of passion grows louder in the market of human activities. They must not make decisions in the spur of news that make screaming headlines and arouse the uncontrollable emotions of political leaders or of the populace. They must decide between right and wrong by the criterion of universal conscience, by the judgment, not only of the fleeting instance of evolving history, but the unending caravans of generations to come.

The inherent justice of their decisions must continue being sensed as the treasured human heritage long long after they had rendered their inescapable tribute to death, like the aroma which continues enriching and sweetening the air long after the flowers have been crushed in the chemist's retorts to give way to their perfumed essence, like the beauty of the temples and palaces of Palmyra which continues charming our memory millenniums after they have become just dusty ruins, like the heavenly melodies which continue lingering in our ears long after we

have heard those musical gems, such as the masterpieces of Bach and the symphonies of Beethoven, like light emitted by stars which ceased to exist centuries ago still travelling in the immensity of space to attract our admiration and arouse dreams of immortality.

In order that judges could render judgments of lasting value which would embody the wisdom of the ages and the moral sense of all time, it is necessary that they should preside over tribunals which must be looked upon as permanent institutions of justice, not temporary makeshifts, more appropriate to serve ephemeral purposes than to be the inviolable temples of an eternal goddess. And the judges themselves, to acquire the olympic serenity, the awesome and noble austerity, the hieratic aloofness, the magestic equanimity proper of their great mission, there being none greater that can be entrusted to a person as the image of God, must feel, by the permanency, stability, and security of their tenure of office, that they owe an undivided loyalty, not to any transient idols or to any momentary masters, no matter how powerful they are, but to the inseparable twin divinities of truth and justice.

Judge Robert N. Wilkin said that the special function of a judicial officer is to determine what is right and what is wrong, not only for the clamorous present, but for silent generations yet to come. From him we quote these illuminating paragraphs:

"The guiding force in social evolution is not to be found in the arbitrary will of groups, nor in a common purpose. It is to be found in the law of our nature, that immanent or inherent law founded on the characteristics of human kind. 'A law instilled and not imposed,' as Cicero said, 'a law in which we are fashioned, not instructed.' It is not created by proclamation or legislative fiat. It is discovered by patient research and spiritual insight.

"The true judge must have something of the vision of a prophet. He must be able to see the trends of his time extended, so that principles which he announces may be adjusted to conditions yet to come. The observation of Graham Wallas that a great judge needs a touch of the qualities that make a poet has been quoted with approval by Professor Chafee, Justice Cardozo, and others. Poets, as has been stated, bear the same relation to society as the antennæ of an insect to its body; they are 'feelers' of the body politic. Their sensibilities are more acute, more advanced than those of their contemporaries, and what they feel and express today their fellows will feel and understand tomorrow. Poets, prophets, judges—they are God's elect; we cannot elect them.

"The great judge cannot be a child of his age. If his judgments are to be great they must be timeless, or at least timed to the future. The spirit of the law should enable him to transcend the spirit of his times and he should be able to speak *sub specie aeternitatis*. What a desecration of the office to choose its incumbent by any system which forces him to temporize!

"Judges in early times were priests, or more accurately stated, the priests performed the functions of judges. There is still much about the judicial office that is priestly. This has ever seemed quite natural to those who took seriously their first legal learning from Blackstone, who stated at the outset that all human laws depend upon divine law. While for a time that teaching seemed out of fashion, the more recent trend is to acknowledge again our subjection to a law of nature, a law divine. Be that as it may, it will not be disputed that a proper performance of judicial duties requires a devotion quite similar to the consecration of the priest. Judges, like the clergy, should be kept unspotted from the world. Any personal interest, selfish concern, or party consciousness, corrupts not only the judge but the judicial function. Any want of honest detachment in the judge undermines public faith in judicial administration. As has frequently been stated, it is quite as important to the public that judges should be free from the appearance of evil as that they should be free from actual evil. The prevalent disrespect for law is prompted not so much by corruption in the courts, as by that system of choosing judges which makes every judge suspect.

"The taking of judicial office should be much like the taking of holy orders—one should not do so who is unwilling to suffer a kind of civil death. The only way in which one can be worthy of the office is by submerging self in the performance of the duties of the office. A judge should be only the voice of the law. As Cicero said 'While the law is a voiceless magistrate, the magistrate is law made vocal.' It is arrogant presumption for a judge to pose as anything more, and gross indiscretion for him to assert his own voice. The only way in which he can avoid violation of the injunction, 'Judge not, that ye be not judged,' is by pronouncing, not his personal will, but the judgment of the law. How otherwise could a judge impose a death sentence and live in peace? If the judgment is his own, the blood of the condemned is upon him. If his judgment is at the behest of popular clamor he has given sanction to lynching. But if his judgment is the pronouncement of the law, the judicial function is fulfilled and his conscience is clear. The judicial robe should submerge personality and make its bearer, like a priest in vestment, an impersonal part of a divine function." (*The Judicial Function and the Need of Professional Section of Judges* by Robert N. Wilkin, Journal of the American Judicature Society, Vol. 29, No. 4, Dec., 1945.)

The facts of current experience, showed the imperative need of an intellectual overhauling as part of the work of post-war rehabilitation in all orders of our national life. Many elemental tenets and ideals need be restated, if not rediscovered. The worries and psychological shocks caused by the Japanese initial victories and brutal oppressions concomitant with their occupation of our country, had the effect of warping the mentality and sense of moral values of not a negligible number of persons. There are men whose intellectual outlook and views of freedom and fundamental human rights, tethered by defective development of ideology, are not only outmoded, but absolutely incompatible with the trends of progress, whose brains appear not to be completely freed from the embryonic amnion

and are in need of allantoic nutrition, who would rather wield the buldgeon of jungle arbitrariness and make a coffle of serfs of free people, than abide by the constitutional precepts and the noble doctrines of the UNO Charter, whose juridical ideas, rather than in the forum of modern democracy, have their proper place among the fossils of apteryx, megatheria and dinosaurs' museum and, notwithstanding, are being haled in apparently responsible sectors of the press as heroes of progressiveness. Such nonsense and intellectual travesty are inconceivable except in a topsyturvy world which has adopted the thyrsus as the choicest emblem of human happiness, where the frenzied mental processes have been inverted as if in the Corinthian order, the frieze, cornice, and architrave are placed at the foot of the column and above it the stylobate.

Among the basic concepts that must be included in the wholesale intellectual overhauling which we need undergo, if we have to follow the mental, social, legal, and moral thread which was cut at the impact of the disastrous invasion of our soil, is the one we have on personal liberty, upon which the traditional democratic principles we had been accepting and following before the enemy occupation, as part of the nature of our social and political institutions, appear to have been forgotten, the present case being one of a series of instances evidencing it, as can be seen in our opinions in Raquiza *vs.* Bradford (G. R. No. L–44, 41 Off. Gaz., 626; Reyes *vs.* Crisologo (G. R. No. L–54, 41 Off. Gaz., 1096): Duran *vs.* Abad Santos (G. R. No. L–99, 42 Off. Gaz., 263); Teehankee *vs.* Rovira (G. R. No. L–101, 42 Off. Gaz. 717); Teehankee *vs.* Director of Prisons (G. R. No. L–278); Tañada *vs.* Quirino (G. R. No. L–237), the pronouncements in which we are reiterating here.

The moral hiatus in our national life is over, and in this hour of resumption of democratic processes, there is an imperative need, as one of the cornerstones of our national structure, to redefine and reaffirm our pre-war concept of human freedom.

The petitioner is entitled to be immediately set free, and we vote for restoring him to his personal freedom of which he was deprived without any legal process.

Petition denied.

RESOLUTIONS OF THE SUPREME COURT

UNITED STATES OF AMERICA
COMMONWEALTH OF THE PHILIPPINES
SUPREME COURT

IN RE CONTEMPT PROCEEDINGS AGAINST
JUDGE ANTONIO QUIRINO

ORDER OF JUSTICE PERFECTO OF MARCH 14, 1946

In the course of the testimony given during the investigation in this case by Jose L. Guevara, reporter of the *Daily Standard,* said witness testified that respondent Judge Antonio Quirino caused him to publish in the number of the *Daily Standard* dated March 13, 1946, marked Exhibit A–1, an article with the heading "Subpœna to Judge Quirino Revoke" wherein evident falsehoods are published, such as those appearing at the beginning of the following first paragraph of said article:

"After an extraordinary session *in banc* yesterday afternoon, the Supreme Court reversed the decision of one of its members, Justice Gregorio Perfecto, ordering Judge Antonio Quirino of the people's court to submit himself to an investigation being conducted by Justice Perfecto in connection with alleged 'derogatory' and 'contemptible' remarks hurled against the highest tribunal by the 'fighting judge' of the special tribunal trying collaboration cases."

Considering that the inducement to publish in a newspaper a false statement of facts concerning the present criminal proceedings for contempt may affect, not only the personal honesty of Judge Quirino as a man, but may tend to aggravate his responsibility in the present case and such malpractice is a misbehavior that may adversely affect him as a lawyer and his right to continue in the position of a judge, specially if considered in connection with the conduct he has been observing in relation with the petitions for release of Haydee Heras Teehankee, such as the insubordination shown by him in enforcing his order dated October 9, 1945, notwithstanding the fact that the same has been set aside by a decision of the Supreme Court as having been entered with grave abuse of discretion; and considering that by respondent's waiver of his right to be present in the investigation, he has unwittingly deprived himself of the opportunity to contradict the testimony of witness Jose L. Guevara or, otherwise, to present his side of the question, in fairness to him and to give him full opportunity to defend himself, Judge Antonio Quirino is hereby granted five days from notice hereof to present his answer or any evidence he might desire to submit on

the question, or to file any pleading he might consider necessary to protect his right.

Let a copy of this order be immediately served upon Judge Antonio Quirino.

[No. L–278. March 26, 1946]

HAYDEE HERRAS TEEHANKEE, petitioner, *vs.* DIRECTOR OF PRISONS ET AL., respondents. (*In re* Contempt proceedings against Judge Antonio Quirino.)

1. FARSE PUBLICATION CONCERNING AN INVESTIGATION.—When the accused in a contempt proceeding appears to have caused the publication of a false news, tending to discredit the investigator and to hinder or interfere with the investigation he was authorized to hold, the investigator has the right and duty to adopt measures to ascertain the facts concerning the publication before making a report to the Supreme Court.
2. PRELIMINARY STEP.—The order of March 14, 1946, issued by the investigator in the course of the investigation, was only a preliminary step in the formulation of the report he must submit. The allegation that the issuance of said order was a wilful improper use of power, is not justified.
3. NO PREJUDICE.—The assertion that prejudice is shown in the different opinions of a justice in the original Teehankee habeas corpus case and in his disposal of the Liwag habeas corpus incident, is unconvincing, not only because in the Liwag case the Supreme Court approved *in banc* the action of said justice, but because, in the matter of opinions, every member of this court must be free to express his convictions.
4. "AMICUS CURIAE."—An *amicus curiae* has no right to interfere with or control the condition of the record has no control over the suit and no right to institute any proceedings therein, and cannot assume the function of a party in an action or proceeding pending before the court, and that, ordinarily, he cannot file a pleading in a cause.

RESOLUTION OF MARCH 26, 1946

* * * * * * *

"Acting upon the motion of Judges Arsenio P. Dizon and Pompeyo Diaz, *amici curiae,* in G. R. No. L–278, requesting (1) that the order issued by Justice Perfecto, dated March 14, 1946, be set aside and expunged from the record; (2) that Justice Perfecto be relieved of his duties as commissioner appointed by this court; and (3) that Justice Perfecto be disqualified from taking part in the consideration and decision of the contempt proceedings;

"It appearing that, according to testimony submitted to the said commissioner, it was respondent Judge Antonio Quirino who caused the publication in the 'Daily Standard' of an item containing the news that 'after an extraordinary session *in banc* yesterday afternoon, the Supreme Court reversed the decision of one of its members, Justice Gregorio Perfecto, ordering Judge Antonio Quirino of the People's Court to submit himself for investigation, etc.';

"Considering that such news was false and the publication thereof tended or might tend to discredit the investigator and to hinder, and otherwise interfere with the investigation he was authorized to hold; considering that the commissioner, as such, had the right and duty to report to the court such attempted interference, i(f true, and before making the report), to take measures to ascertain the facts concerning the same; considering that Justice Perfecto's order of March 14, 1946, was only a preliminary step in the formulation of such report; considering that the expressions of opinion and conclusions of law wherein are his own, based upon the aforesaid testimony, and will necessarily be submitted to the court for approval or disapproval when action on the matter is decided; considering that the averment as to disqualification is partly premised on the allegation of wilful 'improper use of power' in this investigation, which allegation is not justified;

"Considering that the assertion is unconvincing that prejudice is shown in the different opinions of Justice Perfecto in the original Teehankee habeas corpus case, and in his resolution in the Liwag incident, for the reason that, in the matter of opinions, every member of this court must be free to express his convictions, and in the Liwag incident, this court approved *in banc* the order of Justice Perfecto; and considering that an *amicus curiae* has no right to interfere with or control the condition of the record (*In re* Pina's Estate, 44 Pac., 332, 333; 112 Cal., 14); and 'has no control over the suit and no right to institute any proceedings therein', * * * and 'cannot assume the functions of a party in an action or proceeding pending before the court, and that ordinarily, he cannot file a pleading in a cause * * *' (2 Am. Jur., *Amicus Curiae*, section 4, pp. 620, 621): the court resolved to deny the petition *in toto*. The Chief Justice and all Associate Justices present."

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REPUBLIC OF THE PHILIPPINES
SUPREME COURT

EXCERPT FROM THE MINUTES OF OCTOBER 30, 1946

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"In G. R. No. L–278, Haydee Herras Teehankee *vs.* Director of Prisons, a few days after the promulgation of the resolution granting petitioner Haydee Herras Teehankee permission to go out on bail, Judge Antonio Quirino of the People's Court publicly criticized this court's action, and his statements were published in the local dailies. Immediately thereafter, the herein respondent Vicente J.

Francisco, attorney for the petitioner, published or caused to be published in the daily *Manila Chronicle* a statement of the following tenor:

"The procedure followed by the People's Court—with the exception of the Division presided over by Judge Nepomuceno—of conferring secretly with the Special Prosecutor after the hearing, regarding the evidence which the latter supposedly has against a political detainee, and, after this conference, denying or granting the petition, is abhorrent not only because it lacks the element of fair play, but also because it may serve as an inducement to bribery. This procedure, incidentally, was employed in the Teehankee case. Since evidence is submitted behind the detainee's back, in a secret conference between the two parties—the Special Prosecutor and the Judges—it does not form a part of the record of the case. Consequently, the Supreme Court would not be able to decide whether the evidence of the Special Prosecutor against the detainee is strong or weak. There is thus no other remedy left for the detainee than to abide by what the People's Court says.

"Under this procedure, the discretion of the People's Court on matters of bail would appear unrestricted and uncheckable. It could be capricious or whimsical or both. This situation would make a detainee receptive to suggestions of bribing the judges through some lawyers whom the judges may take into their confidence. Such lawyers might be willing to serve as contact men, and ask thousands of pesos or jewelry as the price of the detainee's provisional release. And if the detainee can not afford to pay because the price fixed is too stiff or because he does not want to have anything to do with so dirty a deal, he would have to languish in jail.

"The anomalous procedure mentioned above was the very issue in the Teehankee case and for the maintenance of which Judge Quirino fought tooth and nail. Fortunately, the Supreme Court refused to sanction it. Yet Judge Quirino, in his eminently unfair criticism launched against the Supreme Court, has adroitly concealed the issue from the public.

"So, to say that judges should be allowed to employ this odious procedure under the pretext that were the Special Prosecutor to reveal at the hearing the evidence he has, it may give the accused a chance to frustrate justice when the trial of the case comes—might sound good to the gullible, but to my mind it is at best a crude trick. Hence, I for one am glad that the Supreme Court has ruled out such procedure. This feeling, I am sure, is shared by the many lawyers who have previously looked at it with apprehension and abhorrence."

"Required to show why he should not be punished for contempt, said attorney answered, principally alleging, first, that his comment was intended simply to defend this court's ruling from the unjustified remarks of Judge Quirino; and, second, that after the resolution releasing petitioner, the case was no longer pending in this court, and could be publicly discussed.

"The second point must be overruled, for the reasons given in the resolution finding Judge Quirino guilty of contempt.

"As to the first defense, the court is satisfied that respondent meant no offense; that he merely intended to counteract the adverse effects, if any, which the criticism of Judge Quirino might have produced. Nevertheless, we must insist on our right to proceed to the disposition of our business free from outside interference in the form of published criticism or defense of our decisions or proposed decisions in judicial controversies pending here. (See *In re* Torres, 55 Phil., 799). With this reminder, the court votes to dismiss this contempt proceedings.

"Justice Perfecto, in concurring in the dismissal of these contempt proceedings against Attorney Vicente J. Francisco, stated: "From the very beginning, we were of opinion that no contempt could have been committed by respondent by the publication in the *Manila Chronicle* of the statements in question. But we deemed it wise to hold up our dissent from the resolution requiring respondent to show cause, in order not to anticipate the reasons in support of our position which superficial observers might take as an aid to respondent's plea of not guilty. We are of opinion that, upon its promulgation, the resolution granting the release of petitioner Teehankee on bail became part of the emporium of things and ideas, which are a proper subject of public discussion, and respondent only exercised his constitutional right of freedom of opinion in making the statements in question. The case of Judge Antonio Quirino, of the People's Court, is essentially different because he was a judge of an inferior court who, by all standards of good government, must show proper obedience and respect to the decisions, resolutions, and orders of the Supreme Court; and the criticism published by Judge Quirino constituted a clear misbehaviour and indiscipline of an officer of a court in the performance of his official duties, constituting contempt as defined in subsection (*a*), section 3 of Rule 64."

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DECISIONS OF THE PEOPLE'S COURT

REPÚBLICA DE FILIPINAS
TRIBUNAL DEL PUEBLO
MANILA

PRIMERA DIVISIÓN

[CAUSA CRIMINAL No. 3540. POR TRAICIÓN]

EL PUEBLO DE FILIPINAS, Querellante

CONTRA

MARÍA LUISA DOMÍNGUEZ, *alias* MINVILUZ DOMÍNGUEZ, *alias* MINBIRUSU DOMÍNGUEZ, Acusada

DECISIÓN

Se acusa a María Luisa Domínguez, *alias* Minviluz o Minbirusu Dominguez, del delito de traición bajo el art. 114 de nuestro Código Penal Revisado. La querella ó información alega contra la aquí acusada los siguientes cargos:

"That from December 8, 1941 to February 13, 1945, in the City of Manila, Philippines, and at the places hereinbelow specified, the accused, Maria Luisa Dominguez, *alias* Minviluz Dominguez, *alias* Minbirusu Dominguez, being then a person owing allegiance to the United States of America and the Commonwealth of the Philippines and not being a foreigner, did then and there wilfully, unlawfully, feloniously and traitorously adhere to the Empire of Japan and her allies, then enemies of and at war with the United States of America and the Commonwealth of the Philippines, giving them aid and comfort in the manner herein set forth, to wit:

1. That during the period from January, 1942 to February, 1945, in the City of Manila, Philippines, the accused, with intent to give aid and comfort to the enemy, did then and there wilfully and traitorously become, act and render services as interpreter, employee, propaganda agent, informer, guide and spy of and for different units of the Japanese Military Forces in the Philippines, including the "Hodoobu," or Japanese Propaganda Corps, the "Watari Group Intelligence Section," and the Japanese Military Police at Fort Santiago; and as such did then and there collaborate with and aid the said different sections of the army in their activities in the said city and the different provinces of Luzon, Visayas and Mindanao, such as disseminating enemy propaganda, reporting anti-Japanese activities, and actively aiding the said Japanese Military Forces in commandeering and confiscating houses of Filipino civilians for use by the enemy;

2. That sometime in the month of February, 1942, in the City of Manila, Philippines, on the occasion of the fall of Singapore, which the enemy then widely publicized and propagandized, the accused, with intent to give aid and comfort to the enemy, did then and there go around the different districts of the City of Manila

and did then and there utter and deliver public speeches on the significance of the fall of Singapore, more or less of the following tenor:

"Singapore has fallen, which shows the invincibility of the Japanese Army and Navy. America, therefore, after having boasted of terminating Japan within one week has realized and is convinced that she is merciless and is now suffering the greatest defeat in history. My brothers and sisters, now is the time for us to aid and cooperate with the Imperial Japanese Army and Navy who are our own kin by reason of race, customs and traditions. Let us all stand together and do our utmost to win this war, and be free from American slavery."

thereby inducing the loyal citizens to make common cause with the enemy;

3. That during the period from February 5 to February 10, 1945, in the City of Manila, Philippines, when the battle for the south side of Manila was in progress, the accused, with intent to give aid and comfort to the enemy and making common cause with them, did then and there wilfully and traitorously go with and accompany a detachment of Japanese officers and soldiers in the districts of Malate and Singalong guiding them to the different places therein, pointing out houses and other places needed by them, and otherwise jointly acting with them in their preparations for defense against the American and guerrilla forces;

That on or about the night of February 10, 1945, in the said City, the accused, with intent to give aid and comfort to the enemy, and acting jointly and in collaboration with the Japanese soldiers in search of guerrillas and guerrilla suspects, did then and there accompany and guide a detachment of Japanese soldiers to the vicinity of Kansas, Herran and Singalong streets, where civilians had taken refuge from the fire then raging, and with treachery and with the help of more than three (3) armed men whose presence afforded and insured impunity, did then and there wilfully and traitorously point out male civilians in the said group as guerrilla suspects, including Manuel, Francisco and Antonio, all surnamed Diaz, Jose Quiogue, Rene Rius, Jose Moreno and others, whereupon the said civilians, more than 50 in number, were then and there apprehended, tied up and brought by the said Japanese soldiers to a house on Herran Street where the said civilians, except a few who were able to escape, were then brutally massacred by the said Japanese soldiers.

Contrary to law."

La acusada se declaró no culpable y admitió haber nacido en Filipinas y conservado siempre la nacionalidad filipina.

Con respecto al primer cargo, las pruebas presentadas por la acusación demuestran de modo indubitable que la acusada ejecutó los actos que contra la misma se alegan.

Del examen condicional prestado por el testigo Richard Sakakida, miembro del Departamento de Investigación de Crímenes de Guerra del Ejército de los Estados Unidos, resulta que este testigo conoció a la aquí acusada cuando ella estaba empleada en el HODOBO o sea en la Sección de Información del Cuartel General Japonés; que la clase de trabajo que hacía era ir a diferentes sitios y pronunciar discursos con el objeto de infiltrar el espíritu de la *Greater*

East Asia Co-prosperity Sphere en los filipinos, y también para animar a éstos a cooperar con el ejército japonés. Este testigo testificó o identificó el Exhíbit A, que es un libro de fotografías con carácteres japoneses perteneciente al *Watari Group Information Section of the Japanese Army;* en la cubierta de dicho libro aparecen carácteres japoneses en tinta roja que traducidos por el testigo Sakakida quieren decir "View of Expeditionary Forces" y los carácteres que aparecen en tinta blanca en la misma cubierta quieren decir "Publication of the Watari Group Information Section."

El Exhíbit A–1 es una fotografía de la propia acusada tomada por el fotógrafo Protacio Sta. Cruz, en Lucbán, Tayabas, en el mes de enero de 1942, en un mitin allí celebrado y en la que aparece la acusada portando en el brazo izquierdo una banda con carácteres japoneses indicativos de que ella era miembro del grupo de propaganda japonesa.

El Exhíbit A–2, según el mismo testigo, es también una fotografía de la acusada hablando en el mitin en el referido pueblo de Lucban, Tayabas, en cuyo mitin estaban también dos compañeras de la acusada llamadas Miss Moreno y Miss Tuazon.

En el Exhíbit A–3 aparece Miss Moreno y en el Exhíbit A–4 aparece también Miss Tuazon acompañada de la acusada cuya fotografía fué tomada en Pasacao, de la región bicolana.

El Exhíbit B, sobre el cual declaró el testigo Sakakida es una tarjeta de identificación expedida por la Watari, Sección de Propagada, para identificar la persona de la acusada cuyo retrato aparece en dicha tarjeta como nieta del Gral. Ricarte y empleada en la Sección de Propaganda, cuya certificación fué expedida el 22 de enero de 1942. Dicha acusada María Luisa Domínguez es también conocida con el nombre de Minbirusu.

El Exhíbit C es una credencial expedida por el Ejército Japonés a la acusada para justificar que la acusada era una empleada del ejército en el Watari (14th Area Army) Grupo de Información del Departamento de Propaganda, expedida el 30 de abril de 1943.

El Exhíbit D es una credencial en donde consta que la acusada era un miembro del *Watari Group of Information Section* expedido el 14 de septiembre de 1944.

El testimonio del testigo Sakakida fué marcado Exhíbit E, y cubre perfectamente y explica los referidos exhíbitos mencionados arriba.

La misma acusada admitió en corte abierta haber sido miembro de la sección de dicha propaganda japonesa, también conocida con el nombre de HODOBO.

Las pruebas demuestran también que ella pronunció discursos no sólo en diferentes distritos de la Ciudad de Manila, sino también en Iloílo, en la región bicolana y también en algunos lugares de la Provincia de Tayabas, como así lo corroboran los testimonios de Protacio Sta. Cruz, Florencia B. Juaneza y Adolfo de la Rosa. En todos dichos discursos la acusada trató de diseminar en el pueblo filipino el espiritu de la *Greater East Asia Co-Prosperity Sphere* y también la necesidad de cooperar con el ejército japonés, afirmando que los japoneses eran muy fuertes y que los americanos no podrían volver a recuperar Filipinas.

Tenemos, además, el testimonio de Diosdado Lapina, testigo presentado por la defensa, pero que prácticamente testificó como si fuera un testigo de la acusación. En repreguntas, dicho testigo aseveró que la acusada había pronunciado varios discursos, y, habiéndosele puesto de manifiesto el Exhíbit F firmado por Diosdado Lapina, admitió que había sido suscrito por él. En dicho affidávit manifiesta el testigo que él ya conocía a la acusada, como un miembro del cuerpo de propaganda japonesa y que ella pronunciaba discursos en diferentes lugares.

Sosteniendo fuertemente el segundo cargo, están los testimonios de Luis P. Torres y Benito Serrano con respecto al hecho de haber la acusada pronunciado en la Escolta, Manila, un discurso por medio de un "magna vox" con motivo de la caída de Singapore. La rendición de Singapore tuvo lugar hacia el 11 de febrero de 1942, sobre cuyo hecho histórico toma conocimiento este tribunal. "Hacia dicha fecha del mes de febrero de 1942," declara el testigo Luis P. Torres, "me dirigía desde la Plaza de Santa Cruz en dirección a la Escolta, y desde el edificio de Heacock en la Escolta, oí la voz de una mujer, que procedía de un micrófono instalado en dicho edificio; proseguí mi camino hacia el puente Jones y cerca de la Estrella del Norte (Escolta) ví a soldados japoneses, especialmente oficiales, muchos automóviles y autotrucks con cartelones y banderas, y ví y oí a la aquí acusada hablar en tagalo, vestida con traje de filipina, y desde el estribo de un autómovil, en el cual estaba instalado un alto parlante." El testigo afirmó haber oído entre otras las siguientes frases que traducimos:" "Ella comentaba la victoria del ejército japonés en Singapore; ella dijo que la caída de Singapore significaba la derrota de los aliados y también hizo observaciones referentes al color de la raza en esta parte del mundo, diciendo *"sería mejor para nosotros el quitarnos de encima a esta gente de color blanco."* También el testigo oyó que en su discurso la acusada "instaba a los filipinos a cooperar con los japoneses para que éstos continuaran sus esfuerzos hasta la victoria final de la guerra."

El otro testigo, Benito Serrano, corrobora el testimonio de Luis P. Torres. También vió y oyó, desde su oficina en la Estrella del Norte, frente a la cual poco más o menos estaba parado el autómovil desde donde la acusada dirigió la palabra al numeroso público, afirmando que él no podía precisar exactamente las mismas frases empleadas por la acusada en su discurso, pero en concreto él oyó que la acusada anunciaba la toma o caída de Singapore, haciendo hincapié en la invencibilidad de los japoneses, tocando también el punto de la cuestión racial, esto es, que nosotros somos hermanos de los japoneses, y también hizo un comentario sobre la vuelta de los americanos a Filipinas. El discurso tuvo lugar a eso de las 3 de la tarde poco más o menos.

En adición al testimonio de estos dos testigos, según requerimiento de la ley, concurre también el Exhíbit C, introducido por la acusación en el período de repreguntas de la acusada. Representa dicho Exhíbit G una fotografía en donde aparece el retrato de la acusada en un autómovil hablando delante de un micrófono y al que se hace referencia en su declaración por los testigos ya mencionados. La acusada, con respecto a este exhíbit, y a la vista de la fotografía Exhíbit G, terminó por manifestar lo siguiente: "Bien, voy a decir aquí, cómo yo tomé parte en la caída de Singapore, yo no niego que soy yo," y, realmente, no podía negar que fuera ella la que aparece en el retrato porque es una fotografía tan perfecta y clara de la acusada que, a primera vista, el tribunal pudo hacer la correspondiente identificación.

Ciertamente que en este segundo cargo, se alega en la querella, que la acusada pronunció discursos en diferentes distritos de la ciudad de Manila, induciendo a los leales ciudadanos filipinos a formar causa común con su enemigo en aquel entonces, pero las pruebas sólo justifican el discurso pronunciado por ella en la Escolta, pero no el que se dice que pronunció en el Osmeña Park, porque este hecho sólo está sostenido por el testigo Adolfo de la Rosa, y bajo la regla que rige la materia que nos ocupa, este testimonio por sí solo es insuficiente; pero no cabe duda que por sí solo el discurso pronunciado en la Escolta por la acusada, está suficientemente probado y es un acto de traición que envuelve no solo adherencia al enemigo, sino una evidente ayuda y *comfort* a éste. En el asunto de Cramer *vs.* United States, 65 S. Ct. 918, reargued Nov. 6, 1944, decided April 23, 1945 (The Law of Treason, by Vicente J. Francisco, pág. 251) se declara entre otras cosas lo siguiente: "Propaganda designed to cause disunity among adversaries is

one of the older weapons known to warfare, and upon occasion one of the most effective."

Ciertamente, que la propaganda, por medio de discursos, arengas, folletos y publicaciones, constituye un factor de valor indiscutible, y con un campo ilimitado de expansión, que fertiliza el espíritu y el ánimo de las masas para inclinarlas de un lado o de otro, siguiendo el vaivén de la propaganda, sobre todo si se lleva a cabo por persona culta e influyente. No cabe duda que la aquí acusada con su conducta y propaganda realizada ha dado una efectiva y eficaz ayuda y comfort al enemigo que en aquel entonces ocupaba nuestro país.

Con respecto al tercer cargo imputado a la acusada, existen varios testimonios tanto de la acusación como de la defensa en la materia que afecta a este cargo, que se refieren a hechos aislados y que no pueden considerarse como continuos, de tal manera que se hace necesario aplicar la regla de que por lo menos dos testigos deben declarar sobre cada acto, y dichos testimonios de la acusación no cumplen con este requerimiento de la ley.

Pasando ahora a considerar las alegaciones contenidas en el cuarto cargo de la querella en el que se alegan hechos que tuvieron lugar en o hacia la noche del 10 de febrero de 1945, hallamos que tales hechos no están satisfactoriamente establecidos por las pruebas para llegar a una conclusión cierta y definitiva. Si bien es verdad que algunos testigos aseveran que la acusada acompañada de un grupo de soldados japoneses debidamente armados recorría algunos lugares o solares donde cientos de personas se refugiaban consternadas y al pasar hacía con la mano una seña a los japoneses indicando en general a los grupos de vecinos que allí estaban reunidos, es lo cierto también que otros testigos no menos dignos de crédito atestiguan que la acusada no indicó grupo ni menos a persona determinada sobre la cual pudieran cegar los japoneses su crueldad o matanza. Antes por el contrario prestó ayuda a algunos de aquellos refugiados, que acudieron a ella en demanda de auxilio y protección. No existe prueba plena y concreta de que la intención de la acusada al hacer aquella seña indicando a los grupos en general, fuera precisamente con el deliberado propósito de que los japoneses las arrestaran para ser llevados al sacrificio.

Además, no debemos perder de vista, que en aquellos críticos momentos las fuerzas japoneses estaban cegadas con ansias de fuego, destrucción y matanza para todo aquel que no perteneciera a su raza. Y es de conocimiento judicial que aquellos días y especialmente tales momentos eran

de conmoción general, las cabezas ya no regían, el temor campeaba por todos los ámbitos y el estupor y el pánico eran generales. Y es por lo que bajo tales circunstancias, no podemos hacer ninguna declaración de hechos concreta y positiva, con respecto a las alegaciones del cuarto cargo.

Con respecto a las pruebas de la defensa, ésta presentó vetinticinco (25) testigos, incluyendo la propia acusada. En concreto, la defensa ha tratado de demostrar que la acusada fué víctima de las circunctancias en aquel entonces; que realmente era un miembro del cuerpo de propaganda japonesa, pero por obediencia a su abuelo, el General Ricarte; que mediante su influencia e intervención consiguió que algunos detenidos en la Prisión de Fort Santiago fueran liberados, y finalmente que en la noche del 10 de febrero de 1945, ella intervino cerca de las fuerzas japonesas para salvar cierto número de vecinos que estaban en aquellos momentos sobrecogidos y conglomerados en diferentes lugares, y que si procedió así, fué con el objeto de salvar en todo lo posible a muchos de aquellos vecinos civiles de la inhumanidad de los japoneses. Todos estos hechos, aun suponiéndolos suficientemente establecidos, no constituyen, en nuestra opinión, defensa válida y legal bajo la ley de traición, ni menos pueden contrarrestar las pruebas de la acusación, especialmente en cuanto a los cargos primero y segundo que hemos declarado satisfactoriamente probados.

En su virtud, declaramos a la acusada, fuera de toda duda racional, culpable del delito de traición de que está acusada y sin apreciar circunstancia modificativa de responsabilidad criminal, le condenamos a la pena de reclusión perpetua, accesorias de ley, a pagar una multa de diez mil pesos (10,000), y las costas.

Así se ordena.

Manila, I. Filipinas, hoy 15 de octubre de 1946.

LEOPOLDO ROVIRA
Presiding Judge

Concurrimos:

POMPEYO DÍAZ
Associate Judge

ANGEL S. GAMBOA
Associate Judge

REPUBLIC OF THE PHILIPPINES
PEOPLE'S COURT
MANILA

FOURTH DIVISION

[CRIMINAL CASE NO. 90. FOR TREASON]

THE PEOPLE OF THE PHILIPPINES, Plaintiff
VERSUS
DOMINGO D. ACACIO, LUZ ACACIO and VICENTA ACACIO, Accused

DECISION

Domingo D. Acacio, Luz Acacio and Vicenta Acacio are charged with treason under article 114 of the Revised Penal Code alleged in the information to have been committed, as follows:

That on or about and during the period comprised between February 4, 1945, and March 24, 1945, inclusive, in the City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, Domingo D. Acacio, Vicenta Acacio and Luz Acacio, not being foreigners but Filipino citizens owing allegiance to the United States and the Commonwealth of the Philippines, in violation of said duty of allegiance, and conspiring and confederating with one another, did wilfully, feloniously, unlawfully and treasonably adhere to the Empire of Japan, the enemy of both the United States and the Commonwealth of the Philippines, by then and there permitting and allowing a Japanese subject named Fumio Kundo, an espionage agent of the Imperial Japanese Forces charged with the mission of securing military information for the benefit of the Japanese Army to hide, live and reside in their house located at 651–D Invernes, Sta. Ana, Manila, thereby giving the said enemy aid and comfort within the Philippines.

Contrary to law.

Upon arraignment, the defendants pleaded not guilty to the charge. At the trial they admitted that prior to and during the Japanese occupation of the Philippines and up to the commencement of the trial they had always been Filipino citizens.

The evidence for the prosecution may be stated as follows:

Rodolfo V. Paraiso testified that he was, in December, 1944, a first lieutenant in the Guerrilla First Provisional Regiment under Colonel Edgar Right, Jr., United States Army; that he was assigned as a member of the Underground Dispatch engaged in counter espionage activities; that he was then known by the name of Shidataka Katsumi; that he had known the Japanese Colonel Hirai at the Avenue Hotel in December, 1944, having been introduced to him

by a certain Japanese named Okai who was a friend of Nagata; that he knew the Japanese Fumio Kondo; that in or about January, 1945, he had seen Fumio Kondo at the Avenue Hotel; that he was introduced to Kondo by Colonel Hirai for the purpose of submitting information to the latter through said Fumio Kondo; that the information required was about the armed forces and guerrillas that were in Manila; that he knew Colonel Hirai to be the chief of the enemy agents in Manila and suburbs; that Fumio Kondo, then assistant manager of the Avenue Hotel, was acting at the same time as spy and undercover under Colonel Hirai; that he knew Kondo and Colonel Hirai to be Japanese; that he used to meet Fumio Kondo, at least twice a week, in accordance with instruction of Colonel Hirai that he (witness) should see him (Kondo) for the purpose of keeping himself informed of events in the City of Manila especially concerning the movements of the enemy, with a view to reporting to Colonel Hirai on the activities of the guerrillas and armed forces; that he worked in that capacity at the Avenue Hotel, Manila, during the period from the middle of January to February, 1945; and that under him Ramon Salas, a second lieutenant, was running a certain club at the Avenue Hotel with the object of securing information concerning the enemy.

Charles Butler testified that when the American forces arrived in Manila he was in the Sto. Tomas internment camp, Manila; that he knew the accused, Domingo D. Acacio, Luz Acacio and Vicenta Acacio, because they were his friends; that he, accompanied by his wife, met for the first time all of the accused in their residence at 651 Invernes Street, Sta. Ana, Manila, several weeks after the Americans entered the city; that two or three weeks, later, about 10 o'clock in the morning in March, 1945, he and his wife called on the Acacio family in their residence; that on that occasion he and his wife spent the night in the Acacio residence; that before retiring that night he was informed by his wife that a certain Japanese, who had been previously acquainted to him, was staying in the Acacio residence or was in the house; that he was further told by his wife that the Acacios wanted him to speak to this Japanese named Fumio Kondo; that that evening everybody in the Acacio residence was there; that he afterwards saw and talked to the Japanese Fumio Kondo; that he did not remember exactly the conversation he had with the Japanese but he gathered that Kondo was trying to get his (witness') advice about the situation the Japanese were in; that he told Fumio Kondo that as an American citizen he did not have anything

to say in so far as the desired advice was concerned; that he explained to the Japanese that in view of the fact that Japan was an enemy of the United States it was beyond his jurisdiction to give the Japanese any advice; that all the while the Japanese did not say anything; that the next morning the defendant, Domingo D. Acacio, informed the witness and his wife that Kondo, the Japanese, had gone away, leaving a farewell note stating that he, the Japanese, did not wish any longer to burden the Acacio family in the manner he was living in their house; and that Kondo also left a fountain pen as a gift. The witness further testified that after meeting the Japanese that night he did not see him again; and that he did not know whether Fumio Kondo surrendered to the Americans later but afterwards he was aware that the Japanese, Fumio Kondo, was in prison camp.

Vicente Rufino, owner of the Avenue Hotel, Manila, testified that he knew Fumio Kondo who was placed by the Japanese army at the Avenue Hotel sometime in the year 1943; that Kondo worked at that Hotel as a civilian employee from June to December, 1943, when he left; that Fumio Kondo came back in May, 1944, to work in the said hotel until he disappeared on a certain day in February, 1945; that he knew Rodolfo V. Paraiso, *alias* Shidataka Katsumi, Colonel Hirai, Ramon Salas and A. Tuazon; and that he knew that in January, 1945, Fumio Kondo was joined in the Avenue Hotel by an organization of gentlemen under Colonel Hirai of the kempei-tai of the Japanese Military police.

Aquilino Tuazon testified that he knew Rodolfo V. Paraiso, *alias* Tatsumi, Ramon Salas, Colonel Hirai and Fumio Kondo, that he met Fumio Kondo at the Avenue Hotel in January, 1945, because Kondo was a liaison officer of the Japanese army; that under the direction of Colonel Hirai he, together with Paraiso and Salas, opened a Day-Club under the supervision of Fumio Kondo; that he had occasion to talk with Fumio Kondo while he was with the Day-Club usually every day when Fumio Kondo would call him to his desk and asked him something about the guerrilla activities and at the same time warning him not to talk concerning the matter to anybody because it was dangerous, and told him further that if he knew any guerrilla he should report to him; and that the reason why Kondo was inquiring about guerrilla activities was because he was working for Colonel Hirai, the head of the Japanese spies in Manila.

Ramon Lopez Pozas testified that he knew Fumio Kondo; that on January 4, 1945, Fumio Kondo called at his house; that six days before Kondo, who was then the manager

of the Avenue Hotel, called him up by telephone telling him to see him immediately; that he answered the call and Kondo told him that the Americans were already very near Manila and that they would enter the city from ten to fifteen days thereafter; that he invited Kondo to surrender to the American forces and offered him contacts for his safe surrender; that he was told by Kondo that a Japanese would not surrender; that Kondo asked him whether he had enough foodstuffs saying that the Americans would hold the place for a long time; that he told Kondo to look for some place where he could buy rice; which Kondo promised to do; that on February 4, 1945, Kondo came to his (witness') house in a rig with a sack of rice; that he let Kondo come up his house and there Kondo told him that the Americans would soon enter Manila; that he knew the night before through a telephone call that the Americans were already in Rizal Avenue; that he invited again Kondo to surrender and offered him contacts with three guerrillas who would do him no harm; that Kondo told him he could not do it because he received instructions from the Japanese troops to go to either Mandaluyong or Sta. Ana; that Kondo stayed in his house from 2 to 3 o'clock that afternoon; that when he insisted Kondo showed him a small pistol saying that he would commit suicide with it in case he should be cornered by the guerrillas; that Kondo asked him to show the road to Sta. Ana and Mandaluyong which witness did, and that he knew Doming Acacio, the accused, because the latter was the floor manager of the Meiji Restaurant, Escolta, Manila, in which establishment Kondo had certain interest.

Genoveva Abelgas Butler testified that one evening in February, or March, 1945, she and her husband, Charles Butler, happened to be in a house in Sta. Ana, Manila, watching a fire; that they spent the night with the Acacio family in the house of the latter in the meadow around Invernes Street, Sta. Ana, Manila; that at the time, besides the three accused, herself and her husband, there was in the house a Japanese by the name of Kondo; that in the same night her husband talked to the Japanese, Kondo, telling him to "give up" or to surrender to the American authorities, because if he did not "it would be hard for the Acacios"; that the Japanese did not say anything; that that night was the first time she saw Kondo in the house of the accused although she had previously seen Kondo at a store owned in common by her and the defendant Luz Acacio where the Japanese used to call; and that the next morning before the Butlers returned to the Sto. Tomas internment camp they found a note on a

table in the house of the Acacios reading "Goodbye and good luck to all."

Arturo Javier and Jose B. Ingojo, two other government witnesses, identified or otherwise testified relative to the defendants' extra-judicial confessions, Exhibits A, B, and C, for the prosecution, while Salvador Lacuna also identified or otherwise testified on Exhibit B. These three exhibits or confessions of the three defendants read as follows:

EXHIBIT A

CONFIDENTIAL

HEADQUARTERS 493RD COUNTER INTELLIGENCE CORPS DETACHMENT (REGIONAL) UNITED STATES ARMY FORCES IN THE FAR EAST

AFFIDAVIT

COMMONWEALTH OF THE PHILIPPINES
CITY OF MANILA } ss

I, Vicenta Acacio, 41 years of age, residing at 651 Invernes Street, Sta. Ana, Manila, being first duly sworn on oath, depose and say:

I recall that about 10 or 11 o'clock on the night of February 5, 1945 Mr. Fumo Kondo came to our home on Invernes Street. Kondo was trembling and terribly very much agitated. He said that he wanted us to keep him and that when everything quiets down, he would surrender. We took him in solely on that understanding, that he would surrender when the time was ripe. He stayed with us until the 28 of March, 1945 when he surrendered to American soldiers. During the time we had to feed him. On one occasion Kondo wanted to surrender but we told him it could not be done because the guerrillas in the vicinity would kill him and us. Kondo once told me that he was not on the list of the Japanese in the Philippine Islands and so could not travel back to Japan. It is my recollection that Kondo traveled to Japan in 1944.

When Kondo came to the house I took his revolver from him and I watched him at all times to see that he did not leave the house. Kondo never left the house except one instance. We missed him for a short time. We found him outside of the house and he apparently wanted to commit suicide and die as a sniper.

American soldiers took up quarters a short way from our house about the middle of February. American soldiers also visited our house. During the period that Mr. Kondo was staying in the house, he was living in a room just off the dining room. At that time my husband discussed the feasibility of poisoning Kondo so that we would no longer be in danger. I persuaded him not to as it was a crime against God and would have to be answered to. I thought there must be easier way out of it.

Kondo at one time warned us that two relatives, Bernardo and Vicente who were guerrillas, were wanted by the Japanese military police, and it was only by his warning that they were saved. I do not believe that Kondo was a Japanese spy at any time and I believe that he is a civilian working for the Japanese Army.

I have been duly advised of my rights that I need not make any statements; that any statement that I make may be used against me in any proceeding, either civil or criminal, which may arise from the facts hereinafter stated; without any threats or promises

having been made to me, and of my own free will and volition in the presence of the undersigned witnesses.

Further affiant sayeth not.

(Sgd.) VICENTA ACACIO

Subscribed and sworn to before me this 31st day of March, 1945 in the City of Manila, P. I.

(Sgd.) JOSE B. INGOJO
2nd Lt., QMC., Investigating Officer

We, the undersigned witnesses, hereby certify that we were present when Vicenta Acacio made the above statement, and that she was fully advised of the rights as set forth above, and that no promise of immunity or reward was offered to him, and that the above statement was voluntarily made.

WITNESS:

(Sgd.) CHARLES E. STROHEL
(Sgd.) ARTURO JAVIER

EXHIBIT B

CONFIDENTIAL

493RD COUNTER INTELLIGENCE CORPS DETACHMENT (REGIONAL) UNITED STATES ARMY FORCES IN THE FAR EAST

AFFIDAVIT

COMMONWEALTH OF THE PHILIPPINES }
CITY OF MANILA } ss

I, Domingo Acacio, over 21 years of age, residing at 651 Invernes Street, Sta. Ana, Manila, being first duly sworn on oath, depose and say:

That I first became acquainted with Mr. Fumo Kondo and introduced to him by my wife during the latter part of 1942. At the time I was not married to her but thereafter became married December 20, 1942. Kondo at the time was working with the Japanese military forces at the Finance Building in the service of Military Administration. He wore Japanese uniform during this period that had five stars on the right side of coat. After my marriage Kondo would drop in occasionally to my home at 651 Invernes to visit us and my sister Luz Acacio.

Thereafter Mr. Kondo secured a job for me as supervisor of boys cleaning the rooms at the Alhambra Apartments. Kondo at this time was manager of this apartment house and it was used as a residence for Japanese officers. While Kondo was manager I never saw him in uniform. Kondo worked at the Alhambra Apartments for about six months and then became the technical adviser of the Avenue Hotel on Rizal Avenue. The latter part of 1943 Mr. Kondo secured for me the position of manager of the Meiji restaurant on the Escolta. He secured for me this position through a Mr. Ohaise (uncertain of correct spelling) who was at the same time an interpreter at Santo Tomas American internment camp. I held this position until sometime between August and October 1944. During this time Mr. Kondo came out to see us on a number of occasions.

Early in January, 1944 Mr. Kondo left his bicycle and an electric percolator at my shop and said that he and a friend were going to attempt to escape to Baguio. He returned to the shop a day or so later and said that because of strafing and bombing by American planes, he could not make the trip. He again took as his quarters the Avenue Hotel where he resided ever since taking the position as technical adviser. He continued to visit us about twice a week from this time on and even during the period when the Japanese were setting fire to parts of the city. He would call about three or four o'clock in the afternoon. Kondo told me that he had asked Japanese soldiers not to burn our home.

About February 5, 1945, late in the afternoon, Mr. Kondo came to our home in civilian clothing. At the time there were shootings of gun and cannon in the distance and I believed the American troops were in the city. Mr. Kondo said in substance "can you keep me until such time as I can surrender. I answered no. What will the people think. He said, please just for a while. I said I cannot do it." Thereafter I was persuaded by him and thought that he would stay for a day or so and then surrender to the American Forces. Kondo could not surrender in a day as I thought or even later because there were guerrillas around who would kill him and would kill all my family if they found out. When Kondo came to the house he had a pistol which my wife took away from him and hid. Also I would like to say that when Kondo first came to my house on February 5th there were still Japanese soldiers in the area. American troops of the Water Supply Co. moved into a place about fifty feet from my home about one week after the Americans had entered Manila and continued to stay there at all times. American soldiers visited my home while Mr. Kondo was there. While Kondo was here he never left the house at any time except for one occasion when he was found out on the porch. He was crying and said that he wanted to kill himself. He had also written a letter that he was killing himself. I did not know what to do with Mr. Kondo. I wanted to kill him by giving him poison and I made inquiries to get poison but I did not succeed. My wife persuaded me not to do it as she said it would be a sin against God. No one ever came to see Mr. Kondo at any time.

During my acquaintance with Mr. Kondo, I discovered that he was a Christian and somewhat American in his outlook. On one occasion he told me at the restaurant that I run that my cousins Bernardo and Vicente were wanted by the Japanese military police. Immediately warned them and they escaped. The Japanese military police came to my house at two o'clock the next morning, and if it were not for Mr. Kondo's warning they would have been captured. Mr. Kondo at one time was able to get food in to a Mr. Butler, interned at Santo Tomas, through his friend Ohaisa. Mrs. Butler was staying with us at the time. I also remember at one time that Kondo stopped the torture of a Filipino boy who had stolen cigarettes at the Alhambra Apartments. He took this boy to his office, fired him from the job but gave him ten pesos before he left. Kondo had been able to get us small quantities of goods during the time when food was very scarce.

I do not believe that Kondo was a Japanese spy. I am not sure of this status as to whether he is a soldier or a civilian but I believe he is the latter.

At no time did I bury a box of papers and other articles under my house, nor do I know of anyone that did so. Kondo never gave me any money during the period that he was staying at my house.

On the afternoon of March 28, 1945 two Military Police whom we have met at my store called the Tip Top Coffee Shop, visited my home, I left the living room and when I came back Kondo had surrendered himself to the Military Police. They were unarmed at the time, so I went and got the pistol that Kondo had brought to the house. The Military Police searched him and then took him away. It had been our plan to surrender him when he could be surrendered without involving us.

That I have been duly advised of my rights that I need not make any statement; that any statement that I make may be used against me in any proceeding, either civil or criminal, which may arise from the facts herein stated; without any threats or promises having been made to me, and of my own free will and volition in the presence of the undersigned witnesses.

Further affiant sayeth not.

(Sgd.) DOMINGO ACACIO

Subscribed and sworn to before me this 31st day of March, 1945 in the City of Manila, P. I.

(Sgd.) JOSE B. INGOJO
2nd Lt., QMC
Investigating Officer

We, the undersigned witnesses, hereby certify that we were present when Domingo Acacio made the above statement, and that he was fully advised of his rights as set forth above, and that no promise of immunity or reward was offered to him, and that the above statement was voluntarily made.

WITNESS:

(Sgd.) CHARLES E. STROHEL
(Sgd.) S. D. LACUNA

EXHIBIT C

CONFIDENTIAL

HEADQUARTERS 493RD COUNTER INTELLIGENCE CORPS DETACHMENT
(REGIONAL) UNITED STATES ARMY FORCES IN THE FAR EAST

STATEMENT

COMMONWEALTH OF THE PHILIPPINES }
CITY OF MANILA } *ss*

I, Luz Acacio, age 22, residing at 651 Invernes Street, Sta. Ana, Manila, having been duly advised of my rights that I need not make any statement; that any statement that I make may be used against me in any proceeding, either civil or criminal, which may arise from the facts hereinafter stated; without any threats or promises having been made to me, and of my own free will and volition in the presence of the undersigned witnesses; and being first duly sworn on oath, depose and say:

I have known Mr. Fumio Kondo since 1942. He visited my home on a great many occasions.

On the night of February 5 1945 Kondo came to the house at about ten o'clock. At this time the American troops were fighting in Manila. I was ill with a fever and all I know is what I overheard. I heard Kondo say in substance: "I just want to stay here for awhile, everything will be in order. When everything is O.K. I will surrender to the Americans." I did not hear my brothers or

sister-in-law answer. I believe he left the house for a short time that evening and told the Japanese soldiers in the area not to burn the house.

Kondo never left the house until his surrender, March 28, 1945, except that he came up the cellar stairs once with my brother. Kondo was crying and appeared upset. My brother told me later that he wanted to kill himself or be killed.

Kondo's best friend was one OHAISA—interpreter at Sto. Tomas.

To my knowledge Kondo was never a spy, nor did he work for the Japanese Military Police. I never had any suspicion that he might be a Japanese spy.

My brother Domingo Acacio, during Mr. Kondo's stay with us, wanted to get rid of Mr. Kondo and poison him, but my sister-in-law Vicenta persuaded him that it would be well to surrender him to the Americans.

American soldiers visited the house during Kondo's stay but they never found out he was there. There was a unit of American soldiers living a short distance from the house.

Further affiant sayeth not.

Sgd.) LUZ ACACIO

Subscribed and sworn to before me this 31st day of March, 1945 in the City of Manila, P. I.

(Sgd.) JOSE B. INGOJO
2nd Lt., QMC
Investigating Officer

We, the undersigned witnesses, hereby certify that we were present when Luz Acacio made the above statement, and that she was fully advised of her rights as set forth above, and that no promise of immunity or reward was offered to her, and that the above statement was voluntarily made.

WITNESSES:

(Sgd.) CHARLES E. STROHEL
(Sgd.) ARTURO JAVIER

The last government witness, William Henry Jansen, testified regarding Exhibits D, D–1, and E for the prosecution.

No evidence whatsoever was offered or presented at the trial by the defense.

The defendants are charged with having permitted and allowed a Japanese subject, Fumio Kondo, an alleged espionage agent of the Japanese armed forces, to hide, live and reside in their house at No. 651–D Invernes Street, Sta. Ana, Manila, from February 4, to March 24, 1945, while the United States and the Philippines were at war with Japan, thereby giving the enemy aid or comfort. After a careful and thorough examination and consideration of the evidence on record in the present case, we find this charge to be insufficiently substantiated under the two-witness rule in treason cases. It is true that of the ten government witnesses, two, namely, Charles Butler and his wife, Genoveva Abelgas Butler, testified on the alleged overt act, but their testimony is far below the minimum

proof required by the rules and the law on treason. Butler declared that on the occasion he and his wife called on the defendants at their residence and spent the night there and during the evening before retiring Mrs. Butler informed him that a certain Japanese, who had been previously acquainted to him, was staying at the house or was in the house, and that the defendants wanted him to talk to the Japanese, which he reluctantly did; that he understood that the Japanese was trying to get his advice on the situation the Japanese found himself in, but he (Butler) did not give him any advice; and that the next morning, upon awakening, defendant Domingo D. Acacio informed the Butlers that the Japanese had left the house. This piece of evidence hardly finds corroboration in the contradictory statements of Mrs. Butler who, according to the repeated remark at the trial by the special prosecutor, had turned hostile to the prosecution. Mrs. Butler's testimony, in part, reads as follows:

"Q. On or about the month of February, do you remember having seen Fumio Kondo with your husband?

"A. No, sir.

* * * * * * *

"Q. For how long a time have you seen Fumio Kondo in the house of the accused during the month of February, 1945?

"A. I saw him when my husband saw him.

* * * * * * *

"Q. When was the first time you saw Fumio Kondo during that month of February, was it in the morning, afternoon or evening?

"A. I did not see him in the house of the accused. I saw him in the house occupied by the Japanese but was evacuated by them later on along side the river.

"Q. Where did you and your husband see Fumio Kondo?

"A. I don't remember."

It is also true that each and every one of the defendants voluntarily made extrajudicial confession, but the overt act of treason alleged in the information not having been proven by the testimony of two witnesses as hereinbefore stated, those extrajudicial confessions cannot be legally availed of a corroborative proof in the instant case.

"After proof of the overt act of treason by two witnesses, an extrajudicial confession is admissible by way of corroboration, but it is not admissible until the overt act has thus been proved (63 C. J. sec. 22, p. 820).

The suggestion has been made by the prosecution that for harboring and concealing a Japanese subject in their house the defendants may, under the proof on record in the present case, be declared guilty under section 6 of Commonwealth Act No. 616, entitled "An Act to Punish Es-

pionage and Other Offenses Against the National Security." The section just referred to reads as follows:

"SEC. 6. *Harboring or concealing violators of the law.*—Whoever harbors or conceals any person who he knows, or has reasonable ground to believe or suspect, has committed, or is about to commit any offense under this Act, shall be punished by imprisonment of not more than ten years and may, in addition thereto, be fined not more than ten thousand pesos."

While the proof on record shows that Fumio Kondo was a Japanese spy, there is, however, nothing therein to indicate that the defendants knew that said Fumio Kondo was such a spy or that the defendants had reasonable ground to believe or suspect that he, the Japanese had committed or was about to commit any of the offenses penalized under Commonwealth Act No. 616. On the other hand, from the evidence for the prosecution it clearly appears that the defendants did not know that Fumio Kondo was a Japanese spy. Exhibit A for the prosecution, or the extrajudicial confession of the defendant Vicenta Acacio, reads thus: "I do not believe that Kondo was a Japanese spy at any time and I believe that he is a civilian working for the Japanese Army." Exhibit B for the prosecution, or the extrajudicial confession of the defendant Domingo D. Acacio, reads also as follows: "I do not believe that Kondo was a Japanese spy. I am not sure of this status as to whether he is a soldier or a civilian but I believe he is the latter." And Exhibit C for the prosecution, or the extrajudicial confession of the defendant Luz Acacio, says: "To my knowledge Kondo was never a spy, nor did he work for the Japanese Military police. I never had any suspicion that he might be a Japanese spy." Under these facts and circumstances, the defendants could not be convicted under section 6 of Commonwealth Act No. 616.

By reason of the insufficiency of the evidence on record, this Court hereby acquits the accused herein, Domingo D. Acacio, Luz Acacio and Vicenta Acacio, without costs.

The bails posted for the provisional release of the defendants are hereby ordered cancelled.

It is so ordered.

Manila, Philippines, August 8, 1946.

(Sgd.) EMILIO RILLORAZA
Associate Judge

We concur:

(Sgd.) JOSE BERNABE
Associate Judge

(Sgd.) ANGEL S. GAMBOA
Associate Judge

REPUBLIC OF THE PHILIPPINES
PEOPLE'S COURT
FIFTH DIVISION
CEBU CITY

[CRIMINAL CASE NO. 4377. FOR TREASON]

THE PEOPLE OF THE PHILIPPINES, Plaintiff
VERSUS
PASTOR TAN MATEO *alias* NENE TAN MATEO, Accused

DECISION

VARELA, *J.:*

The high crime of treason is imputed to Pastor Tan Mateo *alias* Nene Tan Mateo, in an amended information filed at Dumaguete, Oriental Negros, on June 27, 1946, embracing three counts.

Arraigned on the same day, June 27, 1946, Pastor Tan Mateo *alias* Nene Tan Mateo entered the plea of not guilty. He was represented by Attorney Emilio Lumontad.

The Special Prosecutor offered evidence to prove all the counts in the amended information.

The general allegations and count No. 1, count No. 2, count No. 3, briefly stated, allege:

That at the time herein mentioned and at the places hereafter stated, in the Province of Oriental Negros, Philippines, all within the jurisdiction of this Court, while both the United States and the Commonwealth of the Philippines were in the state of war against their common enemy, the Empire of Japan, said accused, not being a foreigner but a Filipino citizen, owing allegiance to the United States and the Commonwealth of the Philippines, in violation of said duty of allegiance, did then and there wilfully, unlawfully, feloniously and treasonably, adhere to the aforesaid enemy giving her and her armed forces aid and comfort in the following manner to wit:

As Regards Count No. 1:

Count No. 1, briefly stated, alleges: That between July, 1942 and December, 1944, in Dumaguete and neighboring municipalities, Province of Oriental Negros, Philippines, with the intention and purpose of giving aid and comfort to the Empire of Japan, and the Imperial forces, said accused wilfully, feloniously and treasonably, joined the Office of Public Opinion, and organization of informers, agents, spies founded and maintained by the Japanese Army,

headed by one Teodorico Lajato and as such Pastor Tan Mateo *alias* Nene Tan Mateo, the said accused, went around to observe and identify ex-Usaffe soldiers, guerrillas and guerrilla suspects, their movements and activities, and reported his information and observation to said Teodorico Lajato and Bartolome Soledad, Puppet Chief of Police of Dumaguete and the Japanese Army.

As Regards Count No. 2:

That during the month of March, 1943, in Dumaguete, Oriental Negros, the said accused reported to Puppet Chief of Police Soledad and to the Japanese Military Police that Alfonso Calobiran and Antonio Chan were guerrilla members, on account of which report the said two persons were arrested, investigated, maltreated and imprisoned for eight days.

As regards Count No. 3:

That sometime during the middle of the month of October, 1944, in sitio Ubus, Dumaguete, Oriental Negros, said accused in company with other Filipino spies for the Japanese arrested Angeles Catan a guerrilla member whom they brought to the Japanese garrison for investigation regarding guerrilla activities.

The accused in open Court admitted that he is a Filipino citizen, born in the Philippines:

"*Prosecutor Debuque:* Your Honor please.—Before we proceed with the examination of the witness, we would like to ask the accused if he admits that he is a Filipino citizen by birth and that he has always been so.

"*Atty. Lumontad:* We admit that he is a Filipino citizen.

Judge Saguin: (To the accused, Pastor Tan Mateo, *alias* Nene Tan Mateo) Your counsel admitted to the Court that you are a Filipino citizen, do you ratify the admission of your counsel?

Accused Pastor Tan Mateo: I was born in Dumaguete.

Judge Saguin: Are you a Filipino citizen or not?—A Filipino.

Q. And that you were born here in the Philippines?—A.—Yes, sir.

Q. And you have always been a Filipino?—A.—Yes, sir."

To support the general allegations and count No. 1, count No. 2 and count No. 3 in the information, the following witnesses testified: Alejandro Lasola, Antonio Tan, Alfonzo Calobiran, Pedro Gadiani, Socorro Cariño and Pedro Adanza.

Alejandro Lasola, testifying, averred: That he was a driver and a policeman in Dumaguete from June 2, 1942 and remained so up to now, in Dumaguete; that the accused joined the office of Public Opinion; that the object of that organization was to give information about guerrillas and give said information or report to the chief or head of that organization, Lajato; that the accused told

Chief of Police Soledad to apprehend two persons, Alfonso Calobiran and Antonio Chan as guerrilla suspects; that their (Calobiran and Chan) things such as soap, sugar and many other articles found in their respective houses, were confiscated; that said Calobiran and Chan were imprisoned for eight days; that in the meantime, the accused went to gathering information about guerrillas; that he (witness Lasola) did not know whether or not in reality Calobiran and Chan were members of the guerrilla. On cross-examination, said witness declared that the accused told him (witness) that this Chief Lajato, was engaged in espionage; that one time the accused was left in charge of that organization known as Public Opinion by Lajato; that Lajato was a Filipino.

Antonio Chan, a fisherman by profession and one of the runners of the guerrillas, testified; that his duty as such runner of the guerrillas was to find out the Japs movements and their strength; that the accused presented himself as spy of the Japs; that he (the accused) used to get out of the town to find out guerrilla movements and afterwards informed Lajato of the result of his inquiries; that on March 28, 1943, he (witness Antonio Chan) was arrested due to the accused; that on that occasion his house was searched and his goods, such as soap and sugar were taken; that his hands were tied to the truck; that Alfonzo Calobiran was also tied; that Calobiran was also a runner of the guerrillas; that on reaching the town of Dumaguete he, Antonio Chan, was unloaded and tied to an acacia tree; that the other prisoner, Calobiran, was tied to a cement post until the following morning; that his wife brought food for him, but he was not allowed to eat; that he stayed eight days in prison; that during said period the accused used to be with Major Soledad.

Alfonso Calobiran corroborated the two previous witnesses, Alejandro Lasola and Antonio Chan. He was the companion prisoner of Antonio Chan when both of them were arrested on March 28, 1943. In particular he testified: that the accused asked him (Alfonso Calobiran) about guerrilla activities; that he was arrested and his goods were taken away; that he was tied and imprisoned for eight days; that during his days of imprisonment the accused used to come to the jail; that he, the accused, was the cause of his arrest; that Pastor Tan Mateo *alias* Nene Tan Mateo was an employee or operative of the organization known as Public Opinion, which was a Jap espionage center against guerrillas.

Pedro Gadiani, who was former policeman and a truck driver for the Japs, testified as follows: that the accused was an operative under Major Soledad who was then Chief

of Police; that the organization known as Public Opinion used to receive reports from its members or operatives; that on March 28, 1943, the accused told him (Pedro Gadiani) and his companion to get Chan and Calobiran; that when they reached their place called Ubus, they searched their houses and confiscated their goods; that the two previous witnesses, Calobiran and Chan were arrested and imprisoned for eight days; that the accused reported about these two persons and caused their arrest, because he himself (the accused) told him that he reported those two persons to Major Soledad; that the accused sometimes worked under Lajato.

Socorro Cariño corroborated the previous prosecution witnesses and particularly declared that the accused was a member of the Lajato gang, that is, Public Opinion organization to find out guerrillas and USAFFE members; that in October, 1944, Angeles Catan was arrested and taken to the Kempei Tai; and that the accused was present at the time of the arrest.

Pedro Adanza declared: that he was arrested, tied and brought to Major Soledad; that he was imprisoned for fifty-eight days; that the accused tried to induce him (Pedro Adanza) to serve the puppet police force; that in a conversation with the accused, the latter informed him that his carabao and chickens were stolen by the USAFFE and the Japs seem to like the Filipino, and for that reason he (the accused) made up his mind to enter the puppet police service; that he (Pedro Adanza) was forced to join the puppet police force, but he did not accept; that in the year 1944, Angeles Catan was arrested and the accused was one of those who arrested him; that said Angeles Catan is already dead; that during said imprisonment of fifty-eight days the accused was always around the prison and used to investigate the persons arriving from outside. On cross-examination, he stated that the accused used to frequent the office of Soledad day and night.

Exhibit A was admitted in evidence to show that Alfonso Calobiran had been working under the guerrilla forces.

For the defense, Pastor Tan Mateo *alias* Nene Tan Mateo, the accused himself and Alejandro Lasola, the first witness for the prosecution, testified.

The accused declared as follows: That in the year 1943, he worked for three months in the garden of Lajato, which belonged to the Government; that later he was transferred to the organization of Major Soledad as provincial guard until the year 1945; that on March 28, 1943 he did not report or cause the arrest of Antonio Chan and Alfonso Calobiran; that he did not know the nature of the work of Lajato and the purpose of that organization known

as Public Opinion; that Angeles Catan was not maltreated; that he attended school up to grade three. On cross-examination, he stated that he has always been in good terms with the prosecution witness Antonio Chan.

Alejandro Lasola, a prosecution witness, who also declared as defense witness, testified: that on March, 1943, when Alfonso Calobiran and Antonio Chan were arrested, no Japanese accompanied in their arrest.

The accused, while testifying in his own behalf, admitted that he worked for Latajo who was the head of that organization known as Public Opinion, which was entrusted in finding out the activities of the guerrilla forces. The contention of the accused that during his service in that organization he never found out what was the nature of the work of the Public Opinion organization was puerile. His mere denial cannot offset the testimony of Alejandro Lasola who positively declared that he, the accused himself told him that Lajato was engaged in espionage, and that one time he was left in charge of Public Opinion by Lajato. That Antonio Chan, Alfonso Calobiran and Angeles Catan were arrested, tied, maltreated and imprisoned, there can be no doubt. That their arrest was due to the report and information given by the accused, there is not the slightest uncertainty.

Prosecution witness Pedro Gadiani explicitly declared that the accused told him (Pedro Gadiani) that it was he who reported to Major Soledad regarding the guerrilla activities of two persons, Antonio Chan and Alfonso Calobiran. That the persons arrested were in the service of guerrillas in one capacity or another, was also clearly proven. Antonio Chan, according to his own testimony, was one of the runners of the guerrillas and his mission was to find out the Japs movement and strength; that Alfonso Calobiran was a courier of the guerrillas, was also established as further corroborated by Exhibit A.

The testimonies of those six prosecution witnesses amply substantiate the general allegations and count No. 1, count No. 2 and count No. 3 in the amended information to the effect that the accused adhered to the enemy, giving her and her armed forces aid and comfort by serving in the organization engaged in the discovery of the activities of the guerrilla forces and in causing the arrest of guerrilla operatives, runners and couriers in the persons of Antonio Chan, Alfonso Calobiran and also Angeles Catan.

The accused testified that he has only attended school up to Grade III, which testimony was not contradicted. The Court, therefore, credits him with one mitigating circumstance, lack of instruction, with no aggravating circumstance to offset the same.

In view of the foregoing considerations, the Court, finding the accused Pastor Tan Mateo *alias* Nene Tan Mateo guilty of the crime of treason as defined in article 114 of the Revised Penal Code, sentences him to suffer the penalty of fifteen years of *reclusión temporal*, with the accessories of the law, and to pay a fine of ₱2,000 and the costs.

So ordered.

Cebu City (for Dumaguete, Oriental Negros) July 20, 1946.

VICENTE VARELA
Associate Judge

We concur:

FLORENTINO SAGUIN
Associate Judge

FORTUNATO V. BORROMEO
Associte Judge

REPÚBLICA DE FILIPINAS
TRIBUNAL DEL PUEBLO
SALA III

[CAUSA CRIMINAL NO. 3470. POR TRAICIÓN]

EL PUEBLO DE FILIPINAS, Querellante
CONTRA
MARCIAL KASILAG, Acusado

SENTENCIA

Marcial Kasilag está acusado del delito de traición, consistente, según la querella, en:

"I. That in or about and sometime during the period comprised between the months of December, 1941 and February, 1942, in the City of Manila, Philippines, the herein accused, then Manager of the National Power Corporation, for the purpose of and with intent to give aid and comfort to the enemy, did then and there voluntarily, feloniously, wilfully and treasonably disobey and disregard an order from the Headquarters of the United States Armed Forces in the Far East (USAFFE) directing the herein accused to dismantle, disable and render inoperative the hydro-electric power plant at Caliraya, Laguna, to insure that the use thereof would be absolutely denied the enemy, by voluntarily recovering and turning over the vital and dismantled machinery parts of the said plant to the Japanese following their occupation of the City, and, by thereafter causing, helping and participating in the reinstallation and operation of the said power plant for the use and benefit of the above-mentioned enemy.

"II. That in or about and sometime during the months of July and August, 1944, in the City of Manila, Philippines, the herein accused, for the purpose of giving and with intent to give aid and comfort to the enemy, did then and there, voluntarily, unlawfully and actually work for the enemy in their airfields although he was exempt from doing so due to his age, the said accused working aggressively so as to set an example for his men to emulate that they might impress upon their Japanese overseers their genuine desire to coöperate and help.

"Contrary to law."

El hecho procesal es como sigue:

Cuando el ejército enemigo se acercaba a Manila el 28 de diciembre de 1941, el General Casey de las fuerzas americanas llamó a Filemón C. Rodríguez y Venancio F. Lim, jefe-ingeniero y superintendente, respectivamente, de la National Power Corporation para decirles que, era inminente la ocupación japonesa de la Isla de Luzón, por lo que les entregaba una carta del General MacArthur, que debían transmitir a la gerencia de la corporación. Habiendo sido el General Casey ingeniero-consultor de la National Power Corporation antes de la guerra, y en tal carácter, tomó parte en el diseño y construcción de la fábrica de Caliraya, tuvo a bien suplementar dicha carta con algunas instrucciones verbales para el cumplimiento cabal de lo que en ella se ordenaba. La carta (Exhíbito A) dice así:

"HEADQUARTERS
UNITED STATES ARMY FORCES IN THE FAR EAST
OFFICE OF THE COMMANDING GENERAL
MANILA, P. I.

December 28, 1941

NATIONAL POWER CORPN.,
Manila, P. I.
Dear Sir:

Under the authority vested in this Headquarters under present war conditions, you are hereby directed to so prepare your hydro-electric properties that vital parts which are not readily replaceable can and will be destroyed on threat of enemy occupation in the vicinity of your Caliraya plant.

Plans should be complete to ensure that these facilities will absolutely be denied to the enemy. Close coördination should be maintained with the Constabulary and local military authorities, as well as close check by local guards in determining the time to effect this operation. When the threat of occupation is definite, you are directed to proceed to disable the plant as instructed.

By command of GENERAL MACARTHUR

Sgd.) R. J. MARSHALL
Brigadier General, U. S. Army"

El propósito del General MacArthur no era inutilizar la instalación completa y definitivamente, sino impedir que el enemigo pudiera usar y beneficiarse de ella. Conforme

con este objetivo, el General Casey dió estas instrucciones: soltar toda el agua acumulada en el depósito; echar al río Caliraya todo el combustible de aceite y gasolina guardado en el edificio; entregar al Ejército Filipino toda la existencia de dinamita y fulminantes (blasting caps); remover todas las partes vitales de las maquinarias de construcción, como las tractoras, raspadoras, aplanadoras (bulldozers) etc., y finalmente, quitar las piezas vitales de las válvulas (valves) y reguladoras (governors), los generadores y los conmutadores (switch-boards).

Recibida la carta por el acusado y sabedor de las aludidas instrucciones, se hace acompañar de Rodríguez y y Lim, y en la propia tarde del día 28, se trasladan a Caliraya y ejecutan cumplidamente dichas órdenes. Sobre haber echado al río el combustible en existencia y soltado el agua del depósito, quitaron el mecanismo de la válvula "90 Butterfly" que gobierna el agua que fluye a la esclusa de la represa (penstock); quitaron también las válvulas "five-way control" de la turbina, los reguladores (actuators of the governors) de las tres (3) unidades, el aparejo de limpiadores (brush riggings) y los principales motores de los tres (3) generadores; cortaron los alambres del conmutador, haciendo desaparecer además sus marcas de identificación, y quemaron, por último, los impresos indicadores de las conexiones de los alambres. Todo este trabajo duró hasta la medianoche. De regreso a Manila, el acusado se trajó a su casa, las piezas vitales de las válvulas (valves) y reguladores (governors); mas tarde, las guardó parte en la casa del Superintendente Lim y parte en la de Antonio Fuentes, otro ingeniero de la empresa.

Los japoneses ocuparon la ciudad; y al acusado le preocupaba grandemente aquellos objetos escondidos. Resolvió pues, consultar el caso al Sr. José Paez, vice-presidente de la National Power Corporation. Así lo hizo el 6 de enero, 1942, en presencia de los ingenieros de la corporación, Filemón C. Rodríguez, Venancio F. Lim y Filemón Sablan. El Sr. Paez contestó que, en su opinión, todas las corporaciones capitalizadas con fondos públicos, entre ellas la National Power Corporation, habían dejado de existir, desde la ocupación; que el Gerente debía asumir la responsabilidad que demandaba la situación; y que, si estuviera en su lugar y fuera investigado, diría la verdad, o se escaparía e iría a la montaña.

Varios días después, el acusado acudió, otra vez en consulta, al Sr. Jorge B. Vargas, jefe entonces de la llamada Comisión Ejecutiva, a quien descubrió las órdenes del General MacArthur y todo lo que había ocurrido, y el Sr. Vargas le aconsejó que debía esperar lo que el invasor proveyese.

Se asume entonces el acusado toda la responsabilidad del Gerente, y de conformidad con la proclama del Comandante en Jefe del Ejército Imperial Japonés, por la que se ordenaba a las personas encargadas de las corporaciones gubernamentales la presentación de un informe acerca del estado de las mismas, somete su informe, sin mencionar que Caliraya había sido desmantelada; recoge las aludidas partes de maquinaria de la casa de Lim y Fuentes, y las devuelve a Caliraya, antes de finalizar el febrero de 1942. Se vuelven a colocar dichas partes en sus respectivos sitios, por lo que el enemigo consigue hacer funcionar una unidad el 29 de julio de 1942, y otra en enero de 1943.

Por haber devuelto el acusado dichas piezas, se consiguió rehabilitar la fábrica y producir en enero de 1945, veinte mil (20,000) *kilowatts* de fluído eléctrico, frustrando así el objetivo del General MacArthur de negar al enemigo, no concederle, rehusarle en absoluto el uso y las facilidades de la misma, y causando al propio tiempo estos gravísimos daños:

(*a*) El suministro de fluído eléctrico de la Caliraya, distribuído en Manila, ayudó a la reparación y fabricación de implementos de guerra en los talleres manejados por el enemigo, tales como la Trade School, Atlantic Gulf and Pacific Co. y Honolulu Iron Works;

(*b*) El enemigo pudo ahorrarse enorme cantidad de combustible; pues, sin la Caliraya, hubiera habido necesidad para obtener fluído de hacer que funcionase la Manila Steam Plant, gastando combustible, sea aceite, aceite de coco o carbón; y

(*c*) De no haberse devuelto entonces las aludidas piezas, se hubieran salvado de la obra de destrucción hecha por el enemigo, a la venida del ejército libertador en febrero de 1945.

Tales fueron los hechos, expuestos como cargo No. 1 en la querella, que se han probado tanto por los varios testigos de la acusación como por las propias admisiones del acusado. Lejos de discutirlos, el acusado confiesa haber devuelto dichos objetos:

"The warning I received from Mr. Paez injected fear in my heart and lingered so in my mind that when I received the order to resume the construction work from the Japanese with the approval of Mr. Vargas, I simply proceeded to execute the order and *took back to the power plant the governors parts.*" (Exhibit J, p. 3.)

Y en la vista de este causa, declaró así:

"Q. At that time you were under the impression that you committed an error in pointing those parts?—"A. As I said, I made a mistake, on account of fear, *in telling Mr. Matsuo the whereabouts*

of those parts. That was the mistake I made because of the warning of Mr. Paez and because I was afraid of the Japanese.

"Q. Showing to you again this third page of Exhibit J, the last paragraph before your signature, I will read the statement: 'Outside of the mistake that I made through the fear injected to me by the warning of Mr. Paez, I never on my own accord coöperated with the Japanese in the National Power Corporation. As a matter of fact, I gave warning to the employees I trusted to be careful not to give any information or data . . .," did you make that statement?—"A. I made that statement, but I was referring to the mistake I made for *having told the Japanese of the whereabouts of those parts* and for *having returned them after I received the order from the Japanese also.*" (T. n. t., págs. 675–676.)

"Q. Have you had the feeling of guilt at that time, during the time that you had been working under the orders of the Japanese?—"A. I never felt guilty because *I thought that all I had committed was the mistake of having revealed those parts through fear.*" (T. n. t. pág. 942.)

Como se ve, el acusado reconoce espontáneamente su error de haber revelado al enemigo el paradero de las expresadas partes de maquinaria y de haberlas devuelto después a Caliraya.

Sobre este hecho de la revelación al enemigo de los indicados objetos, hay una pequeña discrepancia entre la acusación y la defensa. Porque, mientras la defensa contiende que el hecho ocurrió de esta manera: haciendo en febrero de 1942, una visita a la fábrica de Caliraya el ingeniero japonés Matsuo, en compañía del acusado, de Filemón C. Rodríguez y Venancio F. Lim, el japonés, en notando la falta de reguladores (governors), dijo, dirigiéndose al Gerente: "Missing, missing; where?"; a lo que este último contestó: "Those parts are in Manila for safe-keeping"; en cambio, los testigos de cargo Rodríguez y Lim, por su parte, desmienten este aserto, y dicen que, siendo los técnicos de la corporación, a ellos, y no al Gerente, se dirigió continuamente el japonés, durante aquella visita; y que éste no notó, ni podía notar la falta de los referidos reguladores, toda vez que ya se habían devuelto, días antes, sin conocimiento del invasor.

Teniendo en cuenta que, en el mencionado informe al Comandante en Jefe del Ejército Imperial Japonés, el acusado dejó de consignar el hecho de haber sido Caliraya desmantelada, como si nada hubiera ocurrido en ella; y teniendo en cuenta que, en la larga declaración del acusado a la Counter Intelligence Corps (Exhibit J), tampoco hizo mención alguna del japonés Matsuo y del relatado incidente, concluímos que hay visos de credibilidad en la contención de la acusación; siendo la teoría de la defensa de reciente amaño, preparada con el único fin de justificar en algo la grave culpa de haberse devuelto dichas piezas, sin requerimiento alguno del invasor.

Pero, sea lo que sea, suponiendo buena la teoría de la defensa de que la revelación al enemigo del paradero de las piezas se debió a que el ingeniero japonés había notado la falta de ellos, podría este solo detalle alterar el resultado de la causa? El miedo infundido en el ánimo del acusado por la advertencia del Sr. Paez podría excusar la devolución de las piezas? Dado que el acusado reconoce su error al ejecutar el hecho procesal, es este error excusable o inexcusable?

El "duress" en su doble manifestación de fuerza física y violencia moral, está previsto y definido, como circunstancia de exención, por el art. 12, número 5.° y 6.° del Código Penal Revisado. Concretándonos al "miedo," que es el caso de autos, copiaremos dicho Código, que dice:

"ART. 12. *Circunstancias que eximen.*—No incurre en responsabilidad criminal:

"6.° El que obra impulsado por miedo insuperable de un mal igual o mayor."

El miedo nos hace obrar a veces de distinto modo que lo que quisiéramos. El hombre es débil. No se puede poner como regla en todos los casos que uno desprecie la muerte y los dolores y se ría de las amenazas. Los héroes son raros. La ley no ordena, no puede ordenar el heroismo, ni suponer que el martirio sea el destino del hombre. La ley tiene que considerarnos como somos, con todas nuestras flaquezas, y no puede pedirnos sino lo natural, lo ordinario, lo posible.

Pero, no hasta cualquier miedo para eximir a uno de cumplir con su legítimo deber.

"La conciencia humana no puede admitir que cualquier temor nos exima con justicia del cumplimiento de nuestros deberes. La conciencia humana absuelve a Lucrecia entregándose a Tarquino, porque Tarquino tenía en su mano el matar irreparablemente su honra. Si no hubiese podido amenazarla mas que con un encierro, por ejemplo, Lucrecia se hubiera reido de él o, en otro caso, el mundo habría condenado a Lucrecia." (Pacheco, El Código Penal, Tomo I, pág. 172.)

Hay por tanto, un miedo grave, que exime de responsabilidad, y hay otro miedo que no es grave, y que, cuando mas, atenúa la responsabilidad. Al miedo grave se refiere el art. 12, número 6, con las expresiones *"insuperable y de un mal igual o mayor."* No es un miedo cualquiera, sino éste solo, al que atribuye el poder de eximirnos de responsabilidad.

El término *insuperable*—advierte Aramburu—no debe entenderse de un modo literal absurdo, sino que habrá de tomarse en cuenta, de un lado, las condiciones personales del sujeto, y de otro, aquel mal que produce el miedo. (Aramburu, Notas a la obra de Pessina, Elementos de

Derecho Penal, pág. 431.) En otros términos, es necesario, por una parte, asegurarse del carácter más o menos intimidante de la amenaza; y por otra, se debe comprobar la naturaleza más o menos débil del amenazado.

Según la jurisprudencia, existirá el *miedo insuperable*, cuando el miedo, queda justificado por los antecedentes del hecho mismo, cuando éste no puede eludirse sin recurrir a medios violentos y de fuerza, cuando se demuestra que el mal es grave, cuando se trata de un mal real, serio, grave y de trascendencia. Es preciso pues, que la *amenaza*, que constituye el miedo insuperable, sea de tal gravedad o inminencia, que pueda decirse que la mayoría de los hombres hubiesen cedido a ella, o que produzca una situación que imposibilite vencer el mal con que se amenaza, cohibiendo la libertad del agente y colocándole en la alternativa de sufrir un daño o inferirlo. (Sentencia del Tribunal Supremo Español, de 5 de noviembre de 1880, 6 de diciembre de 1911, 3 de febrero de 1912, etc.).

El requisito de que el mal, con que se le amenaza al agente sea *igual o mayor* que el daño causado por el intimidado, supone una comparación de la gravedad de ambos males, que es difícil de establecer y apreciar. "El mal de otro—observa Silvela—siempre habrá de parecernos menor que el nuestro, fuera de que la naturaleza del uno y del otro puede ser tan diversa, que rechace la comparación." (El Derecho Penal Estudiado en Principio, pág. 199.) Además, no deben olvidarse las condiciones personales del amenazado, ya que una mujer se afecta más fácilmente que un hombre, y un joven más que un adulto. (Asua y Oneca, Derecho Penal, pág. 262.) En la apreciación de la comparación entre ambos males hecha por el agente no deberá procederse por el Tribunal con un criterio de excesivo rigor, pues, siempre el mal propio ha de parecer más grave que el ajeno; en tal caso debe bastar con que el agente haya obrado creyendo de buena fe en la mayor gravedad del mal que le amenazaba. (Cuello Calon, El Nuevo Código Penal Español, Tomo I, pág. 98.)

"Para que un individuo pueda alegar con éxito que obró impulsado por miedo insuperable de un mal mayor o igual, debe probarse que *la amenaza* que fué causa del miedo insuperable se refería a un delito de tal gravedad, y *tan inminente*, que pueda decirse con toda seguridad que los hombres de complexión ordinaria serían por ella sojuzgados. Y el mal con que se amenaza debe ser mayor, o cuando menos igual que aquel que se obliga a ejecutar. El legislador no ha tratado de establecer que cualquier miedo puede eximir a uno de cumplir con su legítimo deber. Solo se ha propuesto eximir de responsabilidad criminal en el caso de que *la amenaza* lleve aparejada un mal tan grave, cuando menos, como el que se pretende que cause el amenazado." (E. U. *vs.* Elicanal 35 J. F., 215–216.)

"Me cogen unos facinerosos y *me amenazan* de muerte si no incendio la casa de mi vecino; si ejecuto el hecho bajo tal amenaza, tan grave como inminente, me comprende la exención de responsabilidad criminal del núm. 10, art. 8 del Código Penal (ahora No. 6, art. 12); mas estos mismos facinerosos *me amenazan* con talarme un bosque si no mato a mi padre; no puede comprenderme en este caso la exención de responsabilidad, porque el mal con que se amenaza es de mucho inferior al que cometo matando a mi padre." (Viada, El Código Penal de 1870, Tomo I, pág. 173.)

To be available as a defense, *the fear must be well founded, an immediate and actual danger of death or great bodily harm must be present and the compulsion must be of such a character as to leave no opportunity to the accused for escape* or self-defense in equal combat. *It would be a most dangerous rule if a defendant could shield himself from prosecution for crime by merely setting up a fear from or because of a threat of a third person.*" (Wharton's Criminal Law, Vol. 1, sec. 384.)

En el presente caso, nadie profirió al acusado amenaza alguna. El mismo Matsuo—suponiendo cierta esta versión—tan solo advirtió la falta de los reguladores e indagó donde estaban. Otros dos (2) males amagaron al acusado, según su testimonio: (*a*) En marzo de 1942, cuando llegaron de Formosa y Japón los tres (3) o cuatro (4) ingenieros japoneses, el jefe de la Administración Militar encargado de la National Power Corporation llamó a los jefes filipinos del personal, a saber, el acusado, Rodríguez, Lim, Sablan y Tavanlar, y poniéndoles en fila, les dijo: "These Japanese managers will now take charge of the corporation; you follow their orders. Any disobedience will be severely punished." (*b*) En el mismo mes de marzo, el acusado fué requerido por el enemigo a prestar una declaración respecto a que estaba en el Ejército Filipino su yerno, el Coronel Macario Peralta, hijo. Estos hechos no determinaron la revelación al enemigo del paradero de las piezas, pues ocurrieron en marzo, ó sea, después de la devolución de las mismas. que se efectuó en el anterior mes de febrero. También es verdad que el Gobierno de Ocupación cometía abusos y atropellos, pero estos males, por gravísimos que sean, nunca fueron próximos e inminentes para el acusado.

Los manantiales del error son las pasiones desordenadas, que unas veces nos ciegan para que no veamos en las cosas lo que hay, y otras nos hacen ver hasta lo que no hay. Cuando tratamos de ejecutar alguna cosa, las pasiones son a veces un auxiliar excelente; mas, para prepararla en nuestro entendimiento, son consejeros muy peligrosos. En el caso de autos, de haber sabido el acusado dominar su pasión del miedo, se hubiera librado del error. Dimanando, pues, su error de un miedo desordenado e infundado, tal error nunca puede ser excusable.

"It is no defense to an indictment for the violation of any law, for the defendant to come to court and say, *'I thought that I was exercising a constitutional right, and I claim an acquittal on the ground of mistake.'* Were it so, there would be an end to all law and to all government. Courts and juries would have nothing to do but sit in judgment upon indictments in order to acquit or excuse. The accused has only to prove that he has been systematic in committing crime, and that he thought that he had a right to commit it, and according to his doctrine, you must acquit." (Ch. J., in the Derr Trial, 6th ed., par. 2777—also U. S. v. Robinson, U. S. Circuit Court, Kansas, 1859, 6th ed., Vol. 3, p. 319.)

No es, por lo tanto, de apreciar la eximente de "miedo insuperable" por no concurrir en el mal temido la condición de inminencia y proximidad; pero puede estimarse como circunstancia atenuante, dado que el art. 13, número 1.° del Código Penal Revisado considera como tal las eximentes imperfectas.

Concluímos que, por haber revelado al enemigo el paradero de las piezas y por haberlas devuelto, dando lugar a la rehabilitación de la fábrica, el acusado ayudó al enemigo por actos, sin los cuales el invasor no se hubiera aprovechado de la misma, ni ahorrado enorme cantidad de combustible. Sobre ser esta ayuda positiva y valiosísima, fué una infracción de una orden expresa de una autoridad legítima, malogrando el intento del General MacArthur de rehusar al enemigo el uso y disfrute de la empresa. Si al ayudar al enemigo, uno comete traición, mayor traición cometerá si la ayuda consistiere en un acto expresamente prohibido. Bajo estas circunstancias, no es dable al acusado alegar que no tuvo intención de traicionar: la misma ayuda prueba esta intención, porque se presume que todo acto ilegal se cometió con intención criminal, y que toda persona desea las consecuencias naturales de su acción voluntaria. [Regla 123, art. 69, letras (*b*) y (*c*).] No es justo el ayudar a un enemigo conocido, y luego decir que no tenía intención de ayudarle.

"If the defendant knowingly gives aid and comfort to one who he knows or believes is an enemy, then he must be taken to intend the consequences of his own voluntary act, and the fact that his motive might not have been to aid the enemy is no defense. In other words, one cannot do an act which he knows will give aid and comfort to a person he knows to be an enemy of the United States, and then seek to disclaim criminal intent and knowledge by saying that one's motive was not to aid the enemy. So if you believe that the defendant performed acts which by their nature gave aid and comfort to the enemy, knowing or believing him to be an enemy, then you must find that he had criminal intent, since he intended to do the act forbidden by law. The fact that you may believe that his motive in so doing was, for example, merely to help a friend, or possibly for financial gain, would not change the fact that he had criminal intent." On that there apparently is no disagreement." (Cramer *vs.* United States, 65 S. Ct., 918.)

"In that branch of the crime of treason which consists in giving aid and comfort to the enemy, the act itself, in most instances, may prove *ipso facto* the intent; as, was stated by Justice Duval: 'when the act itself amounts to treason, it involves the intention, and such was the character of this act.' (In that case the act being delivery to the enemy of certain prisoners.) If, therefore, a person intends to do and actually does specific acts, the natural and probable consequences of which are the giving of aid and comfort, then he intends to commit treason, within the purview of the law. The purpose or motive of the acts is not essential." (U. S. *vs.* Hodges, 2 Wheel, Or. 477, 26 Fed. Cas. No. 15374; Yale Law Journal, Vol. 27, No. 3, p. 344.)

Pero, si el hecho procesal, a que se contrae el cargo No. 1, no fuere bastante para probar, por si solo, el intento de traicionar, los siguientes hechos demostrarán que el acusado hizo causa común con el enemigo.

1. Dos (2) días después de consultar el caso al Sr. Paez, que ya se ha relatado, o sea, el 8 de enero, 1942, so pretexto de pedir instrucciones y consejos al Sr. Jorge B. Vargas, el acusado descubrió a este alto funcionario del Gobierno de Ocupación los planes secretos del General MacArthur sobre el desmantelamiento de la Caliraya. El acusado tenía el deber de guardar el sigilo oficial, tanto más cuanto que en enero de 1942, el Sr. Vargas no representaba la autoridad legítima para un filipino. Sobre la extensión de la jurisdicción territorial que el legítimo Gobierno del Commonwealth ejercía en aquella fecha, el Presidente Quezon decía:

"Japanese military forces are occupying sections of the Philippines *comprising only one-third of our territory.* In the remaining areas constitutional government is *still in operation under my authority.*" (Quezon, The Good Fight, p. 257.)

2. La National Power Corporation es una mera corporación, no una oficina o dependencia del Gobierno. La fábrica de Caliraya estaba entonces en el período de construcción, y de hecho, ninguna unidad funcionaba, al estallar la guerra. El acusado podía separarse de la gerencia, alegando lo mismo que el Sr. Paez (que se desprendió de la gerencia y presidencia del ferrocarril y del Manila Hotel) que la corporación había dejado de existir, a causa de la emergencia. No queremos decir, desde luego, que sea un crimen el emplearse en el Gobierno de Ocupación o en alguna corporación gubernamental, pero decimos que, el que *pudiendo* dejar de servir al invasor, le sirve, demuestra *simpatía al enemigo,* que es detalle sintomático de adhesión.

"*Scope of the word adherence.* The word "adhering," etc. include in general any act committed after war actually exists which indicate a want of loyalty to the government and *sympathy with its enemies,* and which, by fair construction, is directly in furtherance of their hostile design." (Charge to the Grand Jury, Treason C. C. Chic. 1861 Fed. case No. 18, 272.)

Lejos de dejar la corporación, el acusado pone la Oficina de la Gerencia en su propia casa, y emplea en ella a sus hijos, Octavio y Marcial. Cómo habremos de creer en la alegada violencia moral (duress), cuando la misma víctima emplea a sus propios hijos en el servicio del verdugo?

Si el acusado hubiera abrigado, durante los tres (3) años de ocupación, algún propósito de separarse de la empresa, hubiera podido hacerlo en diciembre de 1944, cuando la titulada República suprimió algunas oficinas y redujo el personal de otras. Entonces se disminuyó el personal de la National Power Corporation de sesenta (60) empleados que tenía a solo siete (7), a saber: el acusado, sus dos (2) citados hijos, Ester Patajo, la taquígrafa que el enemigo colocó en la corporación para vigilar al personal, un hermano y otro pariente de la taquígrafa y el Auditor Sr. Celeste. Razón tenía el Ingeniero Sr. Rodríguez al decir que hubiera sido mejor para el buen nombre de la Gerencia, el haber despedido a todo el personal y cerrado la oficina, que retener tan sólo los empleados conocidamente japonófilos. (T. n. t., págs. 785–786.)

3. Estudió el nippongo y con paciencia ayudó a los instructores a enseñar este idioma a los empleados de la corporación. Admite el acusado, en su declaración (Exhíbit J) que:

"I took nippongo lessons in the Meralco building sponsored by the Japanese officers of the Meralco for about eight months. I helped to teach nippongo with the little knowledge I learned when we opened a class in the Paterno building."

4. A mediados del año 1944, el enemigo ordenó al personal de la corporación el trabajo obligatorio en los aeródromos, dispensando de esta obligación a los enfermos y a los que habían llegado a sesenta (60) años. En el período de mayo a agosto de dicho año, el acusado trabajó en los aeródromos del enemigo Nielson, Nichols y Wack-Wack, manejando el pico y la pala, no obstante tener más de sesenta (60) años. Que el acusado hizo tales trabajos libre y espontáneamente, lo demuestra esta su declaración:

"Q. So that the truth of the matter was that you were told that people over sixty were exempted from forced labor?—A. I was told that I did not have to work but I went just the same but I did not go there as forced labor." (T. n. t., págs. 641–642.)

"When I was at the airfield I used to show our employees how to handle the pick and the shovel as I was an engineer and knew how to handle them correctly." (Exhibit J.)

Este deseo de trabajar en los aeródromos, a pesar de la exención, por su carácter subjetivo, es más bien prueba vehemente de adhesión al enemigo que acto externo de ejecución (overt act) del delito querellado. En este sentido apreciamos el cargo No. 2 de la querella.

Hallando, pues, al acusado Marcial Kasilag culpable del cargo No. 1 de la querella y apreciando a su favor la atenuante 1.ª del art. 13 del Código Penal Revisado, el Tribunal le condena a sufrir doce (12) años y un (1) día de reclusión temporal y a pagar una multa de ₱3,000 y las costas.

Sin embargo, atendiendo a las condiciones personales del acusado, su edad avanzada, su falta de perversidad y peligrosidad, y al daño causado por el delito, mitigado por la circunstancia de que el vecindario de esta ciudad se aprovechó asimismo del fluído eléctrico de la Caliraya, durante la ocupación japonesa, resulta notablemente excesiva la pena impuesta por lo que recomendamos la conmutación de dicha pena por otra menos rigurosa, de conformidad con el párrafo segundo, del artículo 5, de dicho Código. El Escribano de este Tribunal elevará una copia de esta sentencia al Jefe Ejecutivo, por medio del Departamento de Justicia, para que el Presidente de Filipinas acuerde lo que más justo estime.

Así se ordena.

Manila, Filipinas, a 19 de octubre de 1946.

JOSÉ S. BAUTISTA
Juez Asociado

El Sr. Juez Dizon concurre en opinión separada.

REPUBLIC OF THE PHILIPPINES
PEOPLE'S COURT
THIRD DIVISION

[CRIMINAL CASE NO. 3470. FOR TREASON]

THE PEOPLE OF THE PHILIPPINES
Plaintiff
VERSUS
MARCIAL KASILAG, Accused

CONCURRING OPINION

I fully concur with Judge Bautista's findings regarding the overt acts alleged in the information.

On the question of defendant's adherence and guilt, in general, I state my views as follows:

In prosecutions for treason the State's burden is not discharged until and unless it has conclusively established (1) adherence—which is a mere state of mind—and a treasonous (2) overt act—which in turn is conduct or concrete and positive action.

One's state of mind rarely is susceptible of demonstration by direct proof, the usual direct means—not so easily available nor given—being the party's own statement or admission as to where his "sympathies" lie. As a rule others do not read one's mind but merely glean or draw their conclusions as to what it is from the party's own deeds. Thus if in a fist fight between A and B, C intervenes and arms A with a club or holds B's hands, onlookers would perforce deduce from his action that his "sympathy" was for A, that is, that he had adhered to the latter's cause.

Adherence, furthermore, may be deduced either from the overt act itself or from other acts which do not amount to a treasonous overt act, this being the well settled rule lately reiterated in the Cramer case (65 S. Ct., 918).

Adherence, however, based as it is upon sympathy for or attachment to a particular party necessarily admits degrees. It may be strong and deep-rooted or lukewarm and superficial. Thus, adherence proven clearly by repeated acts of the party charged with treason, whether amounting to an overt act or not, is, in my opinion, more malicious and criminal than that which the law or logic deduces or implies from a single treasonous overt act.

I am not fully convinced that the four facts mentioned at pages 17 to 21 of Judge Bautista's decision suffice, singly or collectively, to prove defendant's adherence to Japan because, to my mind, while they might induce one to believe that defendant's actions were inspired by sympathy for the invader they may likewise be ascribed to other motives or intent which, however low and unworthy, would not amount to criminal adherence to the enemy.

1. That on January 8, 1942 the defendant revealed to Jorge B. Vargas, then Mayor of Greater Manila, General MacArthur's plan and order to disable the Caliraya plant does not necessarily amount to or imply adherence to the new master.

It is by now history beyond denial that those first tragic days of the occupation were of confusion and bewilderment for officialdom and the majority of the inhabitants of Manila. Because it was obviously unwise to have the leader of the nation and his government trapped in the capital, and because the unanswerable logic of the military situation demanded that he and his government, together with the bulk of the defending army, retreat to Bataan—there to resist the enemy—Manila was not defended and the retreat to and defense of Bataan made. That was the noble part which Destiny had assigned to the Filipino Nation that the total war may be won. He ignores Truth who says that that was "abandoning" the people to their fate.

The defendant was in Manila when the Japanese took over the capital on January 2, 1942. In his confusion and bewilderment—if we are to believe him—he looked up to Jorge B. Vargas and Jose Paez for light and guidance. Paez, prewar Chairman of the Board of Directors of the National Power Corporation, after being informed on January 6 of the disabling work done at Caliraya plant, declined to give defendant and his subordinates any concrete and positive advise, saying that, as far as he was concerned, the National Power Board had ceased to exist and that the Manager (the defendant) could assume all the powers he wanted and "paddle his own canoe." He told the defendant, however, that were he is the latter's place, if asked by the Japanese about the condition of the Caliraya plant, he would either tell the truth or go to the mountains without giving the japanese a chance to question him.

The defendant next went to Vargas on January 8, to whom he likewise revealed what had been done pursuant to military orders. Vargas, according to the defendant, advised him to "wait for the disposition of the Japanese and when they give out the orders, to do whatever they want you to do; simply follow their orders." (T. s. n. p. 549.)

I agree with Judge Bautista in that defendant's revelation of the disabling work at Caliraya made to Vargas, his assumption of full control of the National Power Corporation, his continuance in office and the employment of his sons, Octavio and Marcial, in the same company seem to indicate "sympathy" for the enemy but not, I believe, to the extent of excluding the possibility of such actions having been inspired merely by more or less powerful emotions aroused in him by the statements of Vargas and Paez.

That he remained in office to the end of the Japanese occupation with his two or at least one of his two sons in spite of the fact that in December, 1944 the corporation's personnel was reduced from 60 employees to 7 might have been due to his sympathy for the then already dying cause of Japan, but neither does this fact completely exclude the possibility that their continuance in office was due to the fear that their voluntary cessation at that time might be taken by the Japanese as a sign of pro-americanism.

2. It is true that, in spite of defendant's old age, he patiently took nippongo lessons and helped teach the same to the employees of the National Power Corporation, but rather than proof of culpable adherence to the enemy I would take this only as proof of subserviency or of a desire to please the invader. The three years of Japanese occupation in the Philippines were abnormal times. Some

filipinos, dead set on *surviving*, were so short of resourcefulness that the only way they saw to attain their end was to kowtow to the invader. I would not place the study and teaching of nippongo by themselves on the same plane with an act which must necessarily result in the giving of aid and comfort to the enemy. Culture is universal and desire for it is correspondingly so. To my mind, therefore, it would require other evidence to show that defendant's desire to and patience in learning nippongo and his helping in the teaching thereof was inspired by a criminal intent to give aid.

The same considerations apply to the charge that, although defendant was excused from doing manual forced labor about the middle of 1944, he nevertheless accompanied the employees under him to several airstrips then occupied by the enemy, to supervise their work therein.

But if the facts discussed heretofore suffice not to show adherence and intent to betray on the part of the defendant, I am however of opinion that he cannot escape the necessary implication that goes with the overt act alleged and proven.

On December 28, 1941, by command of General MacArthur the National Power Corporation was both orally and in writing "directed to so prepare your (their) hydroelectric properties that vital parts which are not readily replaceable can and will be destroyed on threat of enemy occupation * * *" and that "Plans should be complete to ensure that these facilities will absolutely be denied to the enemy." (Exhibit A.)

The defendant and his men faithfully complied with this order by, inter alia, removing the 5-way control valves of the turbine, the governor actuators of the three units of the plant, the brush riggings, the principal motors of the three generators, by releasing the water accumulated in the dam and by cutting the wires of the commutator. These different parts and others were disposed of as found in the decision of Judge Bautista. But after his conferences with Paez and Vargas on January 6 and 8, 1942, respectively, the defendant took those vital parts from their hiding place in the homes of his subordinates, Venancio Lim and Antonio Fuentes and had them returned secretly to Caliraya before the end of February, and the same were subsequently re-installed.

The defendant claims that he returned the vital parts because a certain Japanese named Matsuo had noticed their absence from the plant during a tour of inspection made by him together with the defendant, Filomon C. Rodriguez, Venancio Lim and other employees of the National Power Corporation. The prosecution, on the other hand, contends that the defendant returned them surreptitiously,

voluntarily and without any Japanese having ever noticed their absence from the plant, much less ordered their return thereto. I agree with Judge Bautista's view to the effect that the prosecution has fully proven its contention in this respect.

The defendant is a civil engineer with a varied experience as such during his more than thirty years in the government service which culminated in his appointment as Manager of the National Power Corporation. He could not have ignored that in modern wars electric power is vital, but if he knew it not up to the outbreak of the war, he could not have been ignorant of the same from the time he was told of the order to disable the plant given by General MacArthur's command. Inasmuch as we must assume, according to the Supreme Court, that every man intends the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts, the inevitable conclusion is that by defendant's act—which resulted in the rehabilitation of the Caliraya electric plant and its operation by the Japanese—he, in fact, intended the forbidden effect: to aid the enemy. His plea of fear, without a showing that he had been actually subjected to duress, force and intimidation resulting in his acting under the impulse of an uncontrollable fear, would not raise the issue of his criminal intent but the more remote question of his motive, which is irrelevant and constitutes no defense. (Hanauer *vs.* Doane, 12 Wall. 342; Carlisle *vs.* U. S., 16 Wall. 147; Spratt *vs.* U. S., 20 Wall. 459; U. S. *vs.* Lee, 26 Fed. Cas. 907, No. 15, 584; U. S. *vs.* Stephen, 133 F. [2d.] 888.)

But, as stated heretofore, adherence proven by a chain of facts, whether constituting overt acts or not, is more culpable than adherence deduced merely from one single overt act, as in the present case. I admit, furthermore, that fear—but a fear *not* engendered by a serious, real and impending danger or threat and does not therefore *exempt* from guilt—was at the root of defendant's disgraceful conduct. Therefore, while I agree that in the circumstances of this case the defendant, by doing what he did to rehabilitate the Caliraya electric plant, must be deemed to have intended the natural consequences of his act, which obviously amounted to giving aid and comfort to the enemy, I am constrained to say that, after viewing the case in the light of all circumstances appearing of record, defendant's actions in the premises amount to a mere technical violation of the law on treason.

In view of all the foregoing, I therefore agree and concur with Judge Bautista's decision finding the defendant Marcial Kasilag guilty of treason on count No. 1 alleged in the information with one mitigating circumstance in his

favor, and sentencing him to 12 years and 1 day of *reclusión temporal*, with all the accessory penalties provided by law, and a fine of ₱3,000 plus costs, with the recommendation that, for the reasons herein given and the circumstances mentioned in Judge Bautista's decision, executive clemency, to the extent and in the manner and form which His Excellency, the President of the Republic of the Philippines may consider proper, be extended to the defendant.

Manila, Philippines, October 14, 1946.

ARSENIO P. DIZON
Associate Judge

REPÚBLICA DE FILIPINAS
TRIBUNAL DEL PUEBLO
MANILA
TERCERA DIVISIÓN

[CAUSA CRIMINAL NO. 3470. POR TRAICIÓN]

EL PUEBLO DE FILIPINAS
Querellante
CONTRA
MARCIAL KASILAG, Acusado

OPINIÓN DISIDENTE

En esta causa son hechos probados los siguientes:

(1) El 28 de diciembre de 1941, en cumplimiento de una orden recibida del alto mando de la USAFFE el acusado, Marcial Kasilag, como manager de la National Power Corporation, el jefe ingeniero de dicha corporación, Filemón Rodríguez y Venancio F. Lim, superintendente de la planta hydroeléctrica de Caliraya, visitaron dicha planta y ordenaron la remoción de ciertas piezas vitales de la referida planta con el objeto de dejarla inservible hasta que viniera la época de lluvias en que se calculaba que las fuerzas americanas volverían a recapturar Filipinas y especialmente la Ciudad de Manila.

(2) Pocos días después de la entrada de los japoneses en Manila y hacia el 6 de enero de 1942, el acusado con dichos Filemón Rodríguez y Venancio F. Lim fueron a ver en su casa al vicepresidente de la National Power Corporation, Sr. José Páez, ya que no se podía encontrar al presidente, Sr. Sótero Baluyut, para consultarle sobre lo que se debía hacer de las referidas partes vitales que fueron removidas de la planta de Caliraya. En dicha conferencia aquéllos demostraron al Sr. Páez el borrador de un informe

preparado por el Sr. Rodríguez y que debía ser firmado por el acusado, como manager, en que se informaba a los japoneses que las partes removidas fueron llevadas por la USAFFE y escondidas en un sitio desconocido. El Sr. Páez en dicha conferencia manifestó que su opinión era que él había cesado de ser vicepresidente de la National Power Corporation y que ésta ya no existía, y preguntado por su parecer sobre la referida carta, aconsejó que no era procedente decir una mentira a los japoneses porque si éstos llegan a descubrirla el acusado estaría expuesto a ser castigado severamente.

(3) En los primeros días del mes de febrero de 1942, el acusado Marcial Kasilag, Filemón Rodríguez, Venancio F. Lim y un ingeniero japonés llamado Matsuo, visitaron la planta de Caliraya. Después de esta visita los japoneses ordenaron la reconstrucción de dicha planta, habiéndose completado la rehabilitación de una unidad el mes de julio de 1942, y de otra unidad el enero de 1943.

El Gobierno trató de probar que el acusado motu proprio devolvió las partes removidas a la planta de Caliraya y ordenó su rehabilitación sin haber sido requerido a hacerlo por los japoneses; pero el mismo testigo principal de la acusación, Filemón Rodríguez admitió que él no sabe cómo y cuándo fueron devueltas a sus respectivas unidades las partes removidas (páginas 38, 66, t. s. n.). Además, Venancio F. Lim, otro testigo principal del Gobierno dijo que la ausencia de las partes removidas, por ser éstas muy importantes y de gran tamaño, podría haber sido fácilmente advertida por cualquier ingeniero (pág. 105, t. s. n.) lo cual confirma la teoría de la defensa de que cuando en el mes de febrero de 1942, visitaron la planta el acusado Marcial Kasilag, Filemón Rodríguez, Venancio F. Lim, y el ingeniero japonés Matsuo, éste notó la falta de las referidas piezas y preguntó al acusado por su paradero, a lo que éste contestó que se encontraban en Manila.

Uno de los elementos esenciales del delito de traición es la adhesión al enemigo. No puede haber traición sin adhesión, de tal modo que aun probado el "overt act," si no hay adhesión al enemigo no existe traición.

En el asunto de Cramer contra Estados Unidos la Corte Suprema dijo:

"The defendant especially challenges the sufficiency of the overt acts to prove treasonable intention. Questions of intent in a treason case are even more complicated than in most criminal cases because of the peculiarity of the two different elements which together make the offense. Of course the overt acts of aid and comfort must be intentional as distinguished from merely negligent or undesigned ones. Intent in that limited sense is not in issue here. But he make treason the defendant not only must intend the act, but he must intend to betray his country by means of the act."

Sentados estos principios, es oportuno hacer las siguientes consideraciones:

(*a*) Cinco días después de la entrada de los joponeses en la Ciudad de Manila, esto es, el 5 de enero de 1942, el comandante en jefe de las fuerzas japonesas expidió una proclama ordenando a todas las personas relacionadas con las corporaciones de servicios públicos a volver a sus puestos y a presentarse a las autoridades militares.

(*b*) El consejo del Sr. José Páez, que llevaba el peso de la autoridad por ser vicepresidente de la National Power Corporation, ha quedado profundamente impreso en la mente del acusado.

(*c*) El estado de ánimo decaído en que se encontraban los habitantes de Manila, cuando, indefensos y abandonados, se vieron confrontados con la repentina entrada de los japoneses, cuyas crueldades inauditas cometidas en los territorios ocupados en China y en los pueblos y aldeas que encontraron a su paso en dirección a esta ciudad, infundieron un pánico en el corazón de dichos habitantes.

(*d*) La edad avanzada del acusado que tiene 63, años cumplidos.

(*e*) La inclinación del acusado, Marcial Kasilag, de conformarse con el informe propuesto por Filemón Rodríguez a las autoridades militares japonesas sobre la desaparición de las piezas removidas de la planta de Caliraya, "report" que no llegó a presentarse por el consejo del Sr. Páez.

(*f*) El testimonio de Venancio F. Lim al efecto de que la tendencia del personal filipino en la corporación era retardar la obra de rehabilitación, y de que él y los otros ingenieros habían estado haciendo un trabajo de sabotaje, hechos que el acusado no ignoraba (págs. 136 y 137, t. s. n.) y

(*g*) El acusado no se aprovechó de su cargo para algún fin personal o egoista.

Sin tener en cuenta la defensa de miedo interpuesta por el acusado, que la opinión de la mayoría rechaza por incompleta e insuficiente, creemos que, a la luz de los hechos arriba mencionados, no se ha probado el elemento de adhesión, requerido por el artículo 114 del Código Penal Revisado.

Admitimos que al acusado, Marcial Kasilag, le faltaron la valentía y el coraje, propios de un héroe en aquellos momentos críticos para el país, y que obró con cobardía.

Admitimos también que los funcionarios del gobierno, sobre todo los que ocupan puestos de responsabilidad, no deben ser pusilánimes ni cobardes, sino, como conductores del pueblo, deben ser hombres de entereza y carácter, dis-

puestos en cualquier momento a responder al llamamiento del deber.

Si se hubiese negado el acusado a revelar a los japoneses el paradero de las partes vitales de la planta de Caliraya, hubiera sido un héroe, pero los héroes son pocos. Muy contados son los que tienen el temple de un Abad Santos, de un Vinzon, de un General Lim, de los Escodas y de otros que, impavidos, desafiaron la ira del japonés y cayeron enarbolando la indómita bandera del movimiento de resistencia. Pero la cobardía y pusilanimidad que entonces demostró el acusado no llegan a la categoría de traición.

Según la querella y las pruebas del gobierno, el acto delictivo comprendido en el cargo número 1 fué cometido entre los meses de diciembre de 1941 y febrero de 1942; de modo que el hecho ocurrió en los primeros días de la ocupación japonesa. Ahora bien; es humanamente imposible que en tan corto período de tiempo, sin ningún motivo y sin ningún beneficio personal, el acusado haya dado las espaldas a su país y a sus bienhechores, los americanos, para unirse al enemigo, de quien el acusado no había recibido ningún favor, un enemigo con quien no había contraído ninguna deuda de gratitud, un enemigo con el que nada tenía en común, pues el acusado debe toda su educación a los americanos y a las escuelas y universidades americanas.

Además, si la rehabilitación de Caliraya en aquella época crítica y peligrosa se hubiese considerado como una traición, ni Filemón Rodríguez, ni Venancio F. Lim, dos brillantes y jóvenes ingenieros, educados en las mejores universidades de América y, por consiguiente, fervidos creyentes en los principios de gobierno e ideales del pueblo americano, que son nuestros mismos principios e ideales y de cuyo amor a Filipinas y a América no existe la más pequeña duda, no hubieran cooperado en la referida rehabilitación.

La opinión de la mayoría hace hincapié en la admisión del acusado, quien dijo en su affidávit Exhíbit J y en su declaración ante el Tribunal que él cometió un error al revelar al ingeniero japonés Matsuo el paradero de las referidas piezas, como un elemento determinante de la culpabilidad del acusado, pero nosotros creemos que el error cometido por el acusado no demuestra su culpabilidad.

"Where one in ignorance or mistake as to fact commits an act which but for such mistake would be a crime, there is an absence of the malice or criminal intention which is generally an essential element of crime, and the general rule therefore is that such ignorance or mistake of fact will exempt one from criminal responsibility, provided always there is no such fault or negligence on his part as supplies the element of criminal intent," (16 C. J., sec. 53, p. 85.)

"Since evil intent is in general an inseparable element in every crime"—says the Supreme Court—"any such mistake of fact as shows the act committed to have proceeded from no sort of evil in the mind necessarily relieves the actor from criminal liability, provided always there is no fault or negligence on his part." (U. S. *vs.* Ah Chong, 15 Phil., 500, 501.)

Dicha confesión, en vez de probar la culpabilidad del acusado, demuestra su sinceridad y su inocencia, pues solamente los hombres sinceros e inocentes confiesan su error.

Referente a ciertos actos ejecutados por el acusado que, en opinión de la mayoría, son demonstrativos de su adhesión al enemigo, podemos decir lo siguiente:

1. El 8 de enero de 1942, cuando el acusado pidió instrucciones y consejos al Sr. Jorge B. Vargas, éste entoces no representaba ninguna entidad ni organización creada por los japoneses, pues no se había establecido aún la Comisión Ejecutiva, y el Sr. Jorge B. Vargas era entonces Alcalde de Manila nombrado por el Presidente Quezon antes de su salida a Corregidor.

2. El estudio del nippongo no es prueba por sí solo de adhesión al enemigo. Muchos filipinos estudiaron dicho lenguaje con el único objeto de hacerse entender por los japoneses y de protegerse de los peligros a que se veían expuestos por la falta de inteligencia con éstos.

3. Acerca del trabajo obligatorio hecho por el acusado en los aerodromos japoneses, se debe tener en cuenta que, aunque el acusado tenía más de 60 años de edad, como jefe de oficina y manager de la National Power Corporation, estaba obligado, siquiera con su presencia, a supervisar los referidos trabajos.

4. Si el acusado no dimitió de su cargo y colocó a sus dos hijos como empleados en la National Power Corporation, el referido acusado dijo que su objeto era ayudar los ingresos de la familia, que no podía sostenerse con su único salario. Debemos hacer notar, a este efecto, que el acusado tuvo que vender varias propiedades para sostener a los suyos, pues ni su salario ni los de sus dos hijos eran suficientes para su subsistencia.

5. Con respecto al hecho declarado por algunos testigos del gobierno de que el Sr. Kasilag en cierta ocasión ató las cintas de los zapatos de un japonés en frente del edificio de la Meralco, creemos que, aparte de que no se halla plenamente probado, este acto no puede ser considarado como adherencia al enemigo, sino más bien como un acto de extremada cortesía o de servilismo.

Opinamos quees muy aplicable a esta causa el párrafo siguiente acotado de la sentencia de la Corte Suprema de

los Estados Unidos, en la causa de Cramer *vs.* United States, supra:

"(1) Thus the crime of treason consists of two elements: adherence to the enemy and rendering him aid and comfort. A citizen intellectually or emotionally may favor the enemy and harbor sympathies or convictions disloyal to this country's policy or interest, but so long as he commits no act of aid and comfort to the enemy, there is no treason. On the other hand, a citizen may take actions which do aid and comfort the enemy—making a speech critical of the government or opposing its measures, profiteering, striking in defense plants or essential work, and the hundred other things—but if there is no adherence to the enemy in this, if there is no intent to betray, there is no treason."

En vista de los hechos antes relatados y de las consideraciones arriba expuestas, disiento de la opinión de la mayoría y voto por la absolución del acusado Marcial Kasilag.

Manila, Filipinas, 19 de octubre de 1946.

TIBURCIO TANCINCO
Juez Asociado

DECISIONS OF THE COURT OF INDUSTRIAL RELATIONS

REPUBLIC OF THE PHILIPPINES
COURT OF INDUSTRIAL RELATIONS
MANILA

[CASE NO 21-V]

MANILA CORDAGE WORKERS' UNION (CLO)
Petitioners

VERSUS

MANILA CORDAGE COMPANY, Respondent

DECISION

On June 6, 1946, the Honorable, the Secretary of Labor certified to this Court that there exist an industrial dispute between the Manila Cordage Company and its laborers.

On May 27, 1946, the representatives of the laborers of the Manila Cordage Company submitted to the latter a petition which contains the following demands:

"1. That an increase of 80 per cent be granted to the pay or earnings of all employees with a minimum wage of ₱7 per day.

"2. That all prewar employees of the company be given their back pay for the past three years of Japanese occupation in accordance with previous promises and understanding.

"3. That 50 per cent increase must be given to all those who are required to work overtime, that is, in excess of eight (8) hours a day.

"4. That all the prewar employees of the company be given their three months advance pay.

"5. That the employees be given a yearly fifteen days vacation leave with pay.

"6. That the regular bonuses paid to employees yearly in the past be given them as usual.

"7. That those workers or employees who are required to work on Sundays or holidays and in the night shift should be paid double or with an increase of 100 per cent to the regular rate of pay.

"8. That the Manila Cordage Workers' Union (CLO) be recognized by the company with right to bargain collectively in behalf of all the employees."

The Department of Labor failed to make the parties arrive at an amicable settlement; hence, the reason for the hearing of this petition before this Court.

Due to the refusal of the company to yield to the demands of the laborers, the latter went on strike on June 4, 1946, and until now they have not returned to their work. Efforts were exerted by the Court so that the striking

laborers might return to their work pending the determination of the legal and factual questions involved herein, but the parties could not reach any temporary solution. Several hearings were held wherein both parties adduced their evidence in support of their respective contentions and during the said hearings they agreed upon certain points contained in the petition of the laborers.

Demand No. 1 in the petition of the laborers is as follows:

"That an increase of 80 per cent be granted to the pay or earnings of all employees with a minimum of ₱7 per day."

With respect to this demand, the Manila Cordage Company, through its attorney, is willing to give ₱4.50 as minimum daily wage plus a rice ration consisting of one ganta a week for each laborer and his dependents, the ganta of rice costing only ₱1.28. The laborers have expressed their desire that each laborer should be paid ₱5 per day as minimum with an increase of 75 per cent.

With regards to demand No. 2, the laborers are willing to have the consideration of the same postponed for some other occasion.

Demand No. 2 reads as follows:

"That 50 per cent increase must be given to all those who are required to work overtime, that is, in excess of eight (8) hours a day."

The respondent company, through its attorney, has agreed to grant this demand as may be seen on page 33 of the transcript of the stenographic notes, which reads:

"Attorney CARRASCOSO: Fifty per cent increase for overtime work. We agree to give that, Mr. Commissioner."

The laborers also agreed to have the consideration of demand No. 4 postponed for some other occasion.

Demand No. 5 of the petition reads as follows:

"That the employees be given a yearly fifteen days vacation leave with pay."

The respondent company agrees to give to its employees twelve days vacation leave with pay as may be seen from the manifestation of counsel for said company appearing on page 33 of the transcript of the stenographic notes, which reads:

"Attorney CARRASCOSO: We agree to give 12 days."

With reference to demand No. 6, the employees concerned are willing to set aside its consideration.

Demand No. 7 reads as follows:

"That those workers or employees who are required to work on Sunday or holidays and in the night shift should be paid double or with an increase of 100 per cent to the regular rate of pay."

The respondent company is willing to give its laborers 50 per cent increase for work performed on Sundays and holidays; and for work in the night shift 25 per cent increase. (Page 34 of the stenographic transcript.)

With respect to demand No. 8, it is a matter of record that the laborers or their representatives did not present any evidence regarding the requisites required by law in order to gain the requested recognition.

Let us now consider demand No. 1 On this point the laborers presented evidence tending to show that the prevailing cost of living requires a minimum wage of ₱5 per day. On the other hand, the respondent company tried to show that it is not in a position to give this minimum wage of ₱5 a day and to support its allegation presented a comparative statement of wage scale between the wages given by the Elizalde Rope Factory, Inc. and those offered by the Manila Cordage Company, Exhibit 3. In case No. 5–V, Elizalde Rope Workers' Union (CLO), petitioner, *versus* Elizalde Rope Factory, Inc., respondent, decided by this Court on March 19, 1946, barely a little more than four months ago, it was stated:

"* * *. Special Agents of this Court who gathered data from different offices and sources in the City concluded that the cost of living in the City for wage earner's family based on Index Nos: 1946, for 4.9 member of family, for food alone was ₱152.82 computed monthly as of January 20, 1946 (Index Nos. of cost of living, Bureau of Census and Statistics). The same Bureau announced that food expenses for wage earner, as of February 6, 1946, represented the total of ₱157.64 monthly. * * *"

According to the Court's observation the above-quoted findings with respect to the cost of living for a wage earner's family in the City has not changed substantially, with some tendency of prices of certain commodities to increase. In deciding this controverted point, we must bear in mind the world tendency to ameliorate laborers' conditions and to recognize their rights. One of these is the right to a living wage based upon the actual surrounding circumstances, particularly of time and locality. For any enterprise to succeed, it is paramount that its laborers be given a wage that will cover their daily expenses without luxury. And for any owner or manager of any industry to succeed, it is essential that the laborers be given such treatment that he would demand if he were one of them.

In the light of all the above consideration, the Court is of the belief that an increase of ₱0.50 to the present daily wage of the petitioning laborers is considered very reasonable.

With respect to demand No. 5, the respondent company is willing to give twelve days vacation leave with pay instead of fifteen days as requested by the laborers. It is a matter

of record that a similar company, that is, the Elizalde Rope Factory, Inc., is giving to its employees eighteen days vacation leave with pay yearly. There is no valid reason, therefore, after a study of the status of the respondent company, why it would not be in a position to give fifteen days vacation leave with pay yearly to its employees.

Wherefore, the Court orders the Manila Cordage Company (1) to give ₱0.50 increase to the present daily wage of its laborers; (2) to give 50 per cent increase to all those who are required to work overtime in excess of eight (8) hours a day; (3) to give fifteen (15) days vacation leave with pay yearly to its employees; and (4) to pay 50 per cent increase for work performed on Sundays and holidays, with an additional increase of 25 per cent for those who work during the night shift. The petitioning laborers should return immediately to their work in the respondent company as soon as the latter has accepted the terms of this decision. With respect to demand No. 8, the petitioning workers are instructed to comply with the requisites of the law in order to demand recognition to bargain collectively.

So ordered.

Done at the City of Manila, Philippines, July 26, 1946.

ARSENIO C. ROLDAN
Associate Judge

REPUBLIC OF THE PHILIPPINES
COURT OF INDUSTRIAL RELATIONS
MANILA

[CASE NO. 17-V]

PAMPANGA BUS COMPANY, INC.
Petitioner
VERSUS
EMPLOYEES' ASSOCIATION OF THE PAMPANGA BUS COMPANY, INC., Respondent

DECISION

On April 15, 1946, this case was directly filed with this Court by the Pampanga Bus Company, Inc. against the Employees' Association of the Pampanga Bus Company, Inc. whereby the former asked that an order be issued enjoining the employees and laborers of the petitioner from

declaring and going on strike, pending consideration and settlement of the case by the Court. The respondent association was summoned to appear on April 16, 1946, but on this date only the representatives of the petitioner were present. It was reported to the Court that the respondent association, through its president, Simeon Canda, after reading the summons, notice of preliminary conference, and a copy of the petition, refused to accept them. The president of the petitioner, declaring under oath, manifested, among other things, that the petitioner is a corporation duly organized in accordance with the laws of the Commonwealth and engaged in the operation of public services, holding a certificate of public convenience, and that it had 38 buses in operation making trips in the provinces, with 68,000 persons a day as the approximate number of passengers. On April 16, 1946, the Court ordered that pending final determination of the dispute, the petitioner should not suspend, lay off, or dismiss any employee or laborer without just cause and should refrain from accepting other employees and laborers except with the authority of the Court, and the laborers and employees who composed the respondent association were in turn enjoined not to strike or walkout of their employment, without the authority of this Court. On April 17, 1946, an urgent motion was presented by counsel for the petitioner, alleging that at 1 o'clock in the morning of April 17, 1946, the workers and employees of the petitioner, struck and walked out of their employment, notwithstanding the order of the Court, and asking that an order be issued declaring the strike and walkout illegal, requiring the employees and laborers to return to work immediately and praying that the respondent be dealt with for contempt, for having violated the order dated April 16, 1946. On April 20, 1946, the Court received an urgent ex-parte motion for reconsideration dated April 19, 1946, filed by Simeon Canda, praying that the orders of April 16, 1946, and April 17, 1946, be reconsidered and vacated, against which an opposition was presented, thereby requiring the consideration thereof by the Court sitting in banc. On May 9, 1946, in a resolution of this Court, sitting in banc the said urgent ex-parte motion for reconsideration was denied and the case was set for hearing on its merits, pending the investigation of the charges for contempt against the respondent in a separate incident. In the meanwhile, on May 6, 1946, as the result of the efforts exerted by the Commissioner of the Court, Atty. Mariano R. Padilla, a provisional agreement was signed by the parties and submitted to the Court for approval. The said provisional agreement (pp. 69–71 of the Expediente) was

approved by the Court on May 6, 1946. Among the provisions of this agreement were the following:

> That the wage scale to be put into effect provisionally will be that in effect from January 1 to January 31, 1946, provided, however, that to this wage scale shall be added a temporary increase of 50 per cent; that any overtime work to be performed exceeding eight hours will be paid an increase of 30 per cent; that the management agrees to readmit Silverio Concepcion provisionally as one of the assistant traffic managers of the company; and that the employees and laborers should return to work on May 7, 1946, at 6 o'clock A. M.

The laborers returned to their work as agreed. Another stipulation was entered into by the parties on May 14, 1946, regarding payment for work from April 11, 1946, to April 16, 1946 (pp. 85 and 86 of the Expediente).

During the conferences and hearings held in this case, the parties succeeded in securing settlement over the greater portion of the demands, object of the present industrial conflict, contained in the letter of the respondent dated April 8, 1946 (13 demands) (Exhibits A and A–1, pp. 5, 6, and 7, of the Expediente) and in the letter of the same respondent dated April 11, 1946 (eight more demands) (Exhibits B and C, pp. 8–10 of the Expediente). Arduous and difficult as the task was, with a spirit of coöperation and harmony, of give and take and in the most democratic way permitted by the circumstances, with nothing in their minds but the paramount interest and welfare of labor and capital, on July 5, 1946, the parties submitted an agreement signed by them and their counsels and duly ratified before the Clerk of Court and requested that the same be approved (pp. 136–142 of the Record).

The said agreement, dated July 5, 1946, not being contrary to law and to public policy, is hereby approved and the same shall, as between the parties, have the same effect as a decision or award in this case.

In the said agreement, however, the parties had stipulated to submit certain demands for determination without the necessity of presenting evidence. They are demands Nos. 2, 3, and 4 dated April 8, 1946, (pp. 89–90 of the Record) and are quoted hereunder with the corresponding answers by the management:

> 2. The board of investigators should be given a free hand to decide and act according to its finding when dealing with the employees without the intervention of the management if it was so carried and unanimously approved by the board of investigators.
>
> *Answer.*—The Management will not voluntarily surrender its prerogative to act as final judge with regard to justifiable disciplinary action among its own employees although it welcomes the assistance and advice of the Employees' Association Board of Review which it has found helpful.

3. The President of the Employees' Association with the approval of the Board of Directors is the one to determine who among the pre-war employees is to be hired first when the re-employment of a previous employee becomes necessary.

Answer.—The Management will not surrender nor delegate the prerogative and obligation of specifying who among pre-war employee-applicants (or otherwise) shall be first hired. To do so abrogates a prerogative essential to managerial responsibility. We do not accede to the theory that the President of the Employees' Association rather than the Company Manager hires company personnel.

4. Refer to demands dated March 2, 1946, page 2 paragraph VIII. Representative in Board of directors. (*See* No. 4, Demands of April 11, 1946.)

Answer.—The Management cannot (if it would) designate as a member of the Company Board of Directors a member of the Employees' Association or any one else. Procedure for selection of the Board of Directors is governed by Company By-Laws and the Corporation Law of the Philippines.

Also, in the said agreement of July 5, 1946, page 4 thereof (p. 139 of the record), the parties stipulated to submit for the decision of this Court the following legal questions in connection with demand No. 12:

Has the Court of Industrial Relations jurisdiction to determine whether an illness is compensable or not under the Workmen's Compensation Act?

Also

Has it jurisdiction to determine the amount of compensation to be paid for the illness contracted?

DEMAND NO. 2 OF APRIL 8, 1946

No question has been raised regarding the existence of the so-called Board of Investigators formed by the laborers and employees of the petitioner. Not having been proven that its aims are inimical to the interest of the petitioner, the said Board of Investigators should continue to exercise its functions in the form and manner it used to have before the present industrial conflict arose. However, as it deals with questions affecting the direction and management of the laborers and employees working with the petitioner, such as dismissals, suspensions, lay-off, or the imposition of disciplinary measures to employees and laborers for the commission or execution of any illicit or illegal acts in connection with their work with the petitioning company, the petitioner should be the one to definitely decide the step which should be followed in connection therewith. These questions are of administrative nature, hence, their determination and resolution should be vested solely in the management of the petitioning company, without forgetting, however, the fact that any abuse or misuse of this power by it will have the corresponding legal remedy. This demand, therefore, is denied.

DEMAND NO. 3 OF APRIL 8, 1946

This demand, as in the former, deals with questions which fall within the exclusive power of the management of the company.

In the case of the Pampanga Bus Company *versus* Pampanga Employees Union, G. R. No. 46739, the Supreme Court stated that: "The Court of Industrial Relations has no authority to issue compulsory order directing a public service company to recruit from a labor union new laborers it may need to replace members of the said union who have been dismissed from the services of the company, *without proviso that if the union fails to provide laborers possessing the necessary qualifications, the company may employ any other person it may desire.*"

In the case of the Manila Trading and Supply Company *versus* Zulueta and Philippine Labor Union, G. R. No. 46853, the Supreme Court said: "We concede that the right of an employer to freely select or discharge his employees, is subject to regulation by the State basically in the exercise of its paramount police power. (Commonwealth Acts Nos. 103 and 213.) *But much as we should expand beyond economic orthodoxy, we hold that an employer cannot legally be compelled to continue with employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interests. The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer.* There may, of course, be cases where the dismissal or suspension of an employee is whimsical or unjustified or otherwise illegal in which case he will be protected. Each case will be scrutinized carefully and the proper authorities will go to the core of the controversy and not close their eyes to the real situation."

In the case of the Manila Chauffeurs' League *versus* Bachrach Motor Company, Inc., G. R. No. 47138, it was stated: "Por todo lo expuesto, ya que el patrono es responsable en general de los daños causados por sus empleados, *nada es más lógico y justo que la corporación recurrida sea quien tenga el derecho exclusivo de escoger libremente los chofers que han de emplearse en el servicio de sus autocalesas, sin imposiciones de la recurrente.*

"En el caso de Pampanga Bus Co. Inc. *contra* Pambusco Employees Union, Inc., R. G. No. 46739, *hemos declarado que la ley no se inmiscuya en el normal ejercicio del derecho del patrono de escoger sus empleados o de despedirlos.*"

In the case of Manila Electric Company *versus* National Labor Union, Inc., G. R. No. 47279, the ruling in the case of Manila Trading and Supply Company *versus* Zulueta, G. R. No. 46853, has been reiterated.

And lastly, in the case of Dy Pac and Company *versus* Katipunan ng Mga Manggagawa sa Kahoy sa Pilipinas, G. R. No. 47776, our Supreme Court stated: "It appears, furthermore, that on a previous occasion, Nahag was discharged once for cause from the petitioner's employ, but that he was taken back on condition that the president and the secretary of the union to which he was affiliated would guarantee his good conduct and deportment. Under these circumstances, we are of the opinion that *the petitioner in discharging Benito Nahag for the second time for failure to observe exemplary conduct, acted merely in the normal exercise of its right to hire and discharge its employees and in strict accord with the collective bargaining contract above mentioned.*"

These cases, therefore, are one in holding, either directly or indirectly, that the power to select who should be admitted to the service of a given business enterprise is vested upon the management thereof and may only be regulated or subject to intervention by the State in well-defined cases, basically in the exercise of its paramount power. This, however, does not take away the right of labor to make recommendations to the management regarding the matter. This demand, therefore, is likewise denied.

DEMAND NO. 4 OF APRIL 8, 1946

The Court believes that it is not authorized to grant this demand. While there may exist sound and powerful reasons for implementing the idea which is an advanced step toward industrial democracy, still, we feel that labor and capital will yet have to wait until they are prepared to adopt it. Indeed, it is true that in some instances, as in the case of the Manila Railroad Company and the Metropolitan Water District, semi-governmental institutions, concessions were granted to labor unions to sit and participate in the management of the company, but this was perhaps done for experimental purposes, more than anything else. It is alleged that so far no positive result has been obtained in connection therewith and there was fear that a concession of this kind would upset the internal organization of the petitioning company and will make compliance of the disposition of the Corporation Law difficult. It may also be observed that industrial concerns are still being canalized into the anachronous and antiquated patterns. Be that as it may, this particular demand like the general demand for profit-sharing which, by the way, is now being granted by some industries, needs legislative sanction if it will have to be enforced. As a product in the process of collective bargaining, it may be attained by the respondent, but as a result of compulsory

arbitration, its grant seems unwarranted. This demand, is, therefore, denied.

The agreement of July 5, 1946, states that the legal questions heretofore quoted, are submitted for decision in connection with demand No. 12, the first part of which, with respect to the enjoyment of the Eight-Hour Labor Law, has been covered by the agreement of June 14, 1946, already quoted in paragraph 3, page 1, of the agreement and the second part of which was withdrawn. These questions were couched and submitted in a general manner and, therefore, require a general answer.

The Court refers to section 4 of Act No. 103, as amended, under Chapter II, regarding powers and duties of the Court, which partly reads as follows:

"SEC. 4. *Strikes and lockouts.*—The Court shall take cognizance for purposes of prevention, arbitration, decision, and settlement, or any industrial or agricultural dispute causing or likely to cause a strike or lockout, arising from differences as regards *wages, shares or compensation,* dismissals, lay-offs, or suspensions of employees or laborers, tenants or farm-laborers, hours of labor, or conditions of tenancy or employment, between employers and employees or laborers and between landlords and tenants or farm laborers, provided that the number of employees, laborers or tenants or farm-laborers involved exceeds thirty, and such industrial or agricultural dispute is submitted to the Court by the Secretary of Labor, or by any or both of the parties to the controversy . . ."

In the case of the Ang Tibay, G. R. No. 46496, Justice Villareal of the Supreme Court, laid out the essential requisites for the proper exercise of this jurisdiction. He said:

"Para que el Tribunal de Relaciones Industriales pueda ejercer la jurisdicción y competencia que los artículos 1 y 4 de la Ley 103 del Commonwealth le confieren, deben concurrir, pues, los siguientes hechos: 1.º, que exista un conflicto o disputa industrial; 2.º, que el conflicto o disputa sea entre un patrono y mas de treinta obreros afectados; 3.º, que el conflicto tenga por causa diferencias sobre cuestion de jornales, horas de trabajo, etc.; 4.º, que el conflicto de lugar a huelga o paro; 5.º, que el Secretario del Trabajo haya certificado la existencia de tal conflicto y la conveniencia de la intervención del Tribunal de Relaciones Industriales en bien del interés público; y 6.º, que la intervención del Tribunal sea para fines de prevención, arbitraje, decision, y ajuste."

In view of the fact that this ruling was handed on May 29, 1939, the following may now be added to requisite No. 5: "Any or both of the parties may also submit the controversy." (Act No. 559, approved June 7, 1940.)

Normally, the determination whether or not an illness is compensable under the Workmen's Compensation Act and of the compensation to be paid for the illness contracted, falls within the jurisdiction of the regular courts and not to

a special court, like the Court of Industrial Relations. Section 2 of the Workmen's Compensation Act defines the nature of the illnesses which are compensable and provides that the employer "shall pay compensation in the sums and to the persons hereinafter specified." After this definition, there follow provisions regarding the period of compensation, amounts to be paid in cases of death, total disability, computation of wages, etc. (Sections 8, 10, 14, 15, 16, 17 and 19 of the said Act.) Section 32 of the oft-repeated Act provides:

"All actions for compensation brought in justice of the peace courts and Courts of First Instance under this Act shall have priority in the dockets of said courts over all other cases, etc. . ."

which simply implies that when the Workmen's Compensation Act was promulgated on December 10, 1927, the Legislature could not have conceived of vesting the Court of Industrial Relations with the power to take cognizance of the questions arising from the said compensation act, because this court was a subsequent creation of the Legislature, same having been promulgated on June 7, 1940. The Court takes judicial notice of the fact that heretofore cases arising from the Workmen's Compensation Act had been invariably brought before and taken cognizance of by the regular courts of justice. There may be instances, in view of the provisions of Act No. 103, as amended, wherein this Court has concurrent jurisdiction with the regular courts of justice, in cases arising from the Workmen's Compensation Act, if and when the essential requisites for the exercise of such jurisdiction are present, but such cases have not come up in concrete form before this Court and we are not in a position to cross the bridge before we reach it. Our conclusion, therefore, in connection with the two legal questions propounded is that the power of the Court to declare whether or not an illness is compensable under the Workmen's Compensation Act and of the compensation to be paid for illness contracted, depends upon the facts of a given case.

In view of the foregoing, the Court renders judgment on these demands of the respondent association in the same tenor and under the same conditions specified and set forth in the body of this decision.

So ordered.

Manila, Philippines, August 10, 1946.

JOSE MA. PAREDES
Acting Presiding Judge

REPUBLIC OF THE PHILIPPINES
COURT OF INDUSTRIAL RELATIONS
MANILA

[CASE NO. 6–V]

GOTAUCO & COMPANY, INC., Petitioner
VERSUS
KAISAHAN NG MGA MANGGAGAWA SA KAHOY SA PILIPINAS, Respondent

[CASE NO. 7–V]

DY PAC & CO., INC., Petitioner
VERSUS
KAISAHAN NG MGA MANGGAGAWA SA KAHOY SA PILIPINAS, Respondent

[CASE NO. 8–V]

DEE C. CHUAN & SONS, INC., Petitioner
VERSUS
KAISAHAN NG MGA MANGGAGAWA SA KAHOY SA PILIPINAS, Respondent

DECISION

On February 19, 1946, February 20, 1946, and February 20, 1946, Gotauco and Company, Inc., Dy Pac and Company, Inc., and Dee C. Chuan and Sons, Inc., respectively, presented to this Court a petition asking its intervention in the settlement of a strike staged by their laborers on February 6, 8, and 9, 1946, respectively, after the Department of Labor failed to solve their disputes. The respondent laborers belong to an organization called "*Kaisahan ng mga Manggagawa sa Kahoy sa Pilipinas.*"

Before declaring a strike, the laborers of Gotauco and Company, Inc. presented to said company on February 7, 1946, a petition which contains the following demands:

"1. Hinihiling na dagdagan ng 100 bahagdan ang kasalukuyang sinasahod ng mga pahinante at de cargo;

"2. Hinihiling na kung pinagagawa ng higit sa 8–oras na paggawa sa maghapon katulad ng paglalamay, ang apat (4) na oras ay itulad sa isang araw ang ibabayad;

"3. Hinihiling na gawing doble and sahod kung pinagagawa ng araw ng Lingo at piestang pangilin;

"4. Hinihiling na, huwag gawin ang pagpapalipat-lipat sa mga gawain ng mga manggagawa; at

"5. Hinihiling namin na kilalanin ang nakatatag na kapisanan sa loob ng pagawaan."

On February 5, 1946, the laborers of Dy Pac and Company, Inc., presented the following demands to the said company before declaring a strike:

"1. Hinihiling namin na ang mga Pahinante ay dagdagan ng 100 bahagdan sa kanilang dating sinasahod;

"2. Hinihiling namin na ang mga manggagawang (de cargo) may pananagutan ay dagdagan ng 50 bahagdan sa kanilang dating sinasahod;

"3. Hinihiling din namin na ang lahat ng mga manggagawa na pinagagawa sa araw ng Linggo at fiesta oficial ay dagdagan ng 100 bahagdan;

"4. Hinihiling namin na kilalanin ang nakatatag na kapisanan sa loob ng pagawaan (Dy Pac & Co.) at

"5. Hinihiling namin na, sina G. Vicente Sapasap at Ben Serrano na itiniwalag sa pagawaan ay ibalik sa kanilang dating gawain."

The petition of the laborers of Dee C. Chuan and Sons, Inc., dated February 8, 1946, before declaring a strike, contains the following demands:

"1. That 100 per cent wage increase be added to the present salary received and 50 per cent for skilled workers (de cargo);

"2. That a 50 per cent overtime pay be granted, after 8-hours labor;

"3. That 100 per cent be paid during Sundays and holidays;

"4. That the present work assigned be permanent;

"5. That the Union be recognized by Dee C. Chuan & Sons as the sole collective bargaining agency."

The three petitioning companies considered the demands of the laborers as unreasonable and arbitrary.

Upon agreement of the parties and due to the similarity of the demands of the laborers, these cases Nos. 6–V, 7–V, and 8–V were heard jointly by this Court.

After a preliminary hearing of these cases, and in order not to aggravate the conditions of both the petitioning companies and the respondent laborers during the pendency of the hearing and decision of the same, with the conformity of the parties, the Court issued an order granting the striking laborers a temporary increase of ₱2 in their daily wage for laborers who were earning ₱5 or less and ₱1.50 for those who earned more than ₱5, under the condition that the said laborers should return to their work the next day, or on February 26, 1946, and the petitioning companies should readmit them to their work. By virtue and in accordance with said order, both parties resumed work.

During the hearing several incidents arose which were satisfactorily threshed out, including the readmission of laborers Vicente Sapasap and Ben Serrano in Dy Pac and Company, Inc.

In support of their demands, the respondent laborers submitted the following evidence: The report of the investigation made by the special agents of this Court over the cost of living in the City of Manila already presented in case No. 4–V, entitled "Philippine Refining Company Workers' Union *versus* Philippine Refining Company, Inc."; news items on the high cost of living in the City of Manila and the purchasing power of the Philippine peso, which appeared in the issues of the *Evening News* and the *Manila Post* on March 19, 1946; oral testimony to the effect that the daily expenses for food, excluding expenses for clothing, cigarettes, transportation, and children's schooling, of a laborer with a family of five (5) members amount to ₱7.10; and oral testimony of the nature of work of the laborers in these lumber companies and the accidents to which they are exposed.

On the other hand, the petitioning companies tried to show that their principal business consists in the sawing of logs and sale of lumber; that the actual high price of lumber is due to the intervention of middlemen, which is, however, at present going down; that the temporary increase in the daily wages of the laborers, by virtue of an order of this Court, dated February 25, 1946, has greatly decreased the income of the companies in such amount that they are almost losing; that for overtime work for six (6) hours, the petitioning companies pay their laborers an amount equivalent to eight (8) hours' work; that for work performed on Sundays and holidays, they pay their laborers 25 per cent additional to their daily wages; that for working continuously for six (6) days in a week, they pay, besides a day's wage as bonus; and that Gotauco and Company, Inc., Dy Pac and Company, Inc., and in Dee C. Chuan & Sons, Inc., there were involved seventy (70) laborers, thirty-eight (38) laborers, and seventy-nine (79) laborers, respectively, in the strike.

For the purpose of acquainting itself with the financial status of the petitioning companies, the Court ordered the examination of the books and accounts of the said companies by the Examining Division of this Court. The result of the examination was submitted to this Court on July 10, 12, and 23, 1946. And for the purpose of throwing more light on the nature of the work being performed by the laborers, the Court likewise ordered the inspection and investigation of the companies' machineries and the kind of work being done by the respondent laborers. The report of the Commissioner on this point was submitted to the Court on July 31, 1946.

From all the above facts, including the examination of the books and accounts of the petitioning companies, as well as the inspection and investigation conducted by the

Commissioner of this Court, the following facts were established.

The purchasing power of the Philippine peso during the months of February and March, 1946, has oscillated between ₱0.18 and ₱0.20 (weekly report of the Bureau of the Census and Statistics, February and March, 1946), and that the monthly expense of a family composed of five members is between ₱210.70 and ₱205.25 for food, including house, clothing, light, water and other family necessities, as compared with the amount of ₱34.83 for the same expenses in the year 1938 (page 140, Bulletin of the Bureau of the Census and Statistics); the work required of the laborers in the main saw and in the rollers calls for training, experience, ability and team work; the work of the lumber stackers who carry the logs and lumber from the main saw to the re-saw requires a great deal of strength and physical energy; the laborers working in these sections of the sawmill are exposed to frequent accidents, as a matter of fact, many of them had been victims thereof. It was also established that most of the laborers employed in the petitioning companies are old and expert workers; that the petitioning companies are engaged, not only in the sawing of logs and lumber for other companies and individuals, but also in the sale of lumber to the public; they have made substantial profits from January 1 to May 31, 1946 (Report of July 10, 12, and 23, 1946, of the Examining Division of this Court); that the order of the Court, dated February 25, 1946, by which a temporary increase in the daily wages of the laborers was granted by the petitioning companies has not decreased the income of the latter, on the contrary, due to the increase in the volume of their business, they obtained substantial profit, notwithstanding the fact that the price of lumber has declined a little.

Demands Nos. 4 and 5 have been the object of an agreement between the parties in the Department of Labor, as may be seen from the records of these cases.

Let us consider the demands of the laborers in the light of these facts and evidence. With respect to demand No. 1 as presented by the laborers of Gotauco and Company, Inc., the latter asked for an increase of 100 per cent for each employee, skilled and unskilled. According to Annex A presented by Gotauco and Company, Inc. (Exhibit 7), the lowest wage given by said company to its unskilled laborers is ₱3.80 daily, and to skilled laborers, ₱11.67 daily as the highest wage. Aside from daily wages, the laborers are allowed to carry home free of charge, bundles of woods which they produce as fuel and sell outside at ₱1.50 or ₱2.50 a bundle.

Demands Nos. 1 and 2 as presented by the laborers of Dy Pac and Company, Inc., call for 100 per cent increase

over their present wages for unskilled laborers, and 50 per cent increase for skilled laborers. According to Dy Pac and Company, Inc., these demands are unreasonable and arbitrary. According to Annex A of the said company, four (4) of its laborers earned ₱3.50 a day, while others earned ₱4.50 a day and ₱13 daily, the highest wage paid to skilled laborers.

Demand No. 1 presented by the laborers of Dee C. Chuan and Sons, Inc., asked for 100 per cent increase to its employees for unskilled laborers, and 50 per cent increase for skilled workers. According to Annex A presented by the said company, the lowest wage paid to its unskilled laborers is ₱3 and the highest wage paid to skilled laborers is ₱10 daily. Said company also considers the demand of the laborers as unreasonable and arbitrary.

This industrial dispute is one of the most common problems in all times not only in this country but throughout the world, aggravated by the post-war conditions concomitant with the instability of prices, abnormal conditions, and high cost of living in all respect.

In all progressive countries, it is the consensus of opinion and practice that laborers should not be considered as mere instruments of labor to be taken advantage of as much as possible. The idea of considering laborers as slaves as well as the idea of master and servant in the relation of capital and labor has been abandoned. Laborers are looked upon as necessary helpers of capital to contribute something that is also essential to its endeavors. Hence, the policy of taking care not only of the physical conditions of the laborers but also of the cultivation of their mental capacities. This method of dealing with the laborers is conducive not only to the benefit of the latter but also to their efficiency, which ultimately redounds to the best produce of the capital. Thus, in all progressive countries the clamor of the laborers and the efforts of the best management is reasonable living wage.

In consonance with this world policy, this Court has always invariably championed a reasonable living wage for the laborers.

According to the weekly report of the Bureau of Census and Statistics for the months of February and March, 1946, the purchasing power of the Philippine peso during those months oscillated between ₱0.18 and ₱0.20, and that the monthly expenses of a family composed of five members is from ₱210.70 to ₱205.25 for food, including house, clothing, light, water and other things, or around ₱7.20 a day. According to the result of the examination of the financial status of these petitioning companies conducted by the Examining Division of this Court and submitted on July 10, 12, and 23, 1946, these companies have made

substantial profits every month from January 1 to May 31, 1946.

An analysis of the wages given to the laborers of the Gotauco and Company, Inc., shows that the minimum is ₱3.08 to laborers of Dy Pac and Company, it is ₱3; and to laborers of Dee C. Chuan and Sons, it is ₱3. From the evidence submitted and other considerations, it is apparent that this wage is not sufficient to cover the daily expenses of a laborer, even one who has not a family of five members. A reasonable increase should be granted to the laborers, which the three petitioning companies can afford to give, if we must give credit to the report of the Examining Division of this Court over the financial status of the said company. This Court, however, does not agree with the 100 per cent increased asked by the laborers.

Considering all these facts together, this Court is of the opinion that an increase of ₱2.50 should be given to those laborers who earned ₱5 or less per day; to those who earned more than ₱5 but less than ₱10, an increase of ₱2 per day; and to those who earned ₱10 or more, an increase of ₱1.50 a day. These increases should be given to both skilled and unskilled laborers.

With regards to the demand of 50 per cent increase for overtime work or for work done after eight hours labor presented by the laborers, it is the opinion of this Court that an additional amount of 50 per cent over their regular wages is reasonable, as the same rate has already been granted by this Court in the cases of the "Philippine Oil Industry Workers' Union *versus* Central Vegetable Oil Manufacturing Company," "Philippine Refining Company Workers' Union *versus* Philippine Refining Company," and the "Elizalde Rope Workers' Union *versus* Elizalde Rope Factory, Inc," cases Nos. 3–V, 4–V, and 5–V, respectively, of this Court.

With regard to the demand of the laborers of the three companies that 100 per cent be paid to them during Sundays and holidays, it is the opinion of this Court that 50 per cent increase over their regular daily wages is reasonable, as the same rate has already been granted by this Court in the above-mentioned cases.

In view of the above findings and considerations, the Court declares that with respect to demands for general increase, an increase of ₱2.50 should be given to those laborers who earned ₱5 or less per day, and an increase of ₱2 to those who earned more than ₱5 and less than ₱10, and an increase of ₱1.50 to those who earned ₱10 or more per day before or at the time of the filing of these petitions; with respect to demand for increase in overtime work or when the laborers work more than eight (8) hours a day, any overtime work in excess of eight (8) hours should be

paid 50 per cent additional, provided that no laborer shall be made to work overtime for more than four (4) hours a day; with respect to demand for increase for work done on Sundays and holidays, an additional of 50 per cent over the regular wage should be paid to those laborers who are made to work on Sundays and holidays; and with respect to demands Nos. 4 and 5, all parties are enjoined to comply with the agreement arrived at in the Department of Labor.

So ordered.

Manila, Philippines, August 15, 1946.

ARSENIO C. ROLDAN
Associate Judge

REPUBLIC OF THE PHILIPPINES
COURT OF INDUSTRIAL RELATIONS
MANILA

[CASE NO. 24–V]

ZACARIAS SEMINIO, AS PRESIDENT OF THE PULUPANDAN BRANCH (NEGROS OCCIDENTAL) OF THE FEDERACIÓN OBRERA DE FILIPINAS, Petitioner

VERSUS

AMERICAN PRESIDENT LINES, LTD., MANILA STEAMSHIP CO. AND EVERETT STEAMSHIP CORPORATION, Respondents

PULUPANDAN LONGSHOREMEN UNION & THE PULUPANDAN STEVEDORES UNION (CLO), Intervenors.

DECISION

This case was directly filed and registered on July 12, 1946, with this Court by the herein petitioner, Zacarias Seminio, as President of the Pulupandan Branch (Negros Occidental) of the *Federación Obrera de Filipinas* against the American President Lines, Ltd., the Manila Steamship Co. and the Everett Steamship Corporation, as respondents, under Commonwealth Act No. 103. The petitioning union alleged that they have more than 1,000 laborer-members. That before June 15, 1946, they entered into collective bargaining contracts with several Chinese merchants of the City of Bacolod, Negros Occidental, for the loading, unloading and handling of all cargoes from any vessel

consigned to said Chinese merchants at Pulupandan, Negros Occidental, based on a schedule of rates agreed upon between the parties. The shipment to these Chinese merchants constitutes 90 per cent of the freight of the respondent companies. They also alleged that on May 7, 1946, the herein complainant and the agent of the respondent companies at Pulupandan, Mr. Isabelo Atienza, signed an agreement which gave to the Federación Obrera de Filipinas the work of handling the cargoes from any vessel consigned to him at Pulupandan, Negros Occidental, stipulating that the charges of loading, unloading and handling of said cargoes should be collected direct from the owners of the cargoes, with whom the complainant had entered into collective bargaining contracts. By virtue of these last contracts, the Federación Obrera de Filipinas had been handling all the cargoes of all the ships of the respondent until June 15, 1946, when their agent, Mr. Isabelo Atienza, without any valid reason and justifiable cause, refused to allow and prevented the members of the Federación Obrera de Filipinas to unload the cargoes on the steamship FS–362 of the Everett Steamship Corporation and advised the complainant that from that date the handling of the cargoes of the boats of the respondents would be performed by the members of the Pulupandan Longshoremen Union which, according to the petitioner, is not a duly registered labor union.

The clash between the members of the Federación Obrera de Filipinas on the one hand and those of the Pulupandan Longshoremen Union and Isabelo Atienza on the other, was averted only by the timely intervention of the Provincial Military Police Command who rushed soldiers to the Pulupandan wharf to maintain peace and order.

Through the intervention also of the Provincial Governor and the Public Defender and a committee of three appointed by the Governor, a temporary compromise agreement was effected on June 17, 1946, that the unloading of the cargoes from the ships of the respondents will be by turn, without any prejudice to have the case brought and decided in Court between the petitioning union and Mr. Isabelo Atienza. This temporary compromise agreement is alleged to have been violated by Mr. Isabelo Atienza.

On July 15, 1946, the respondent Everett Steamship Corporation wrote this Court that the vessels operated by them are owned by the United States Government, operated under the War Shipping Administration for which the American Mail Line, Ltd. acts as General Agents and the Everett Steamship Corporation as sub-agents. The employment of labor by any agent acting for them is a

matter between the agent and the laborer, and any arrangement made by Mr. Isabelo Atienza in Pulupandan with any labor organization is on his behalf and in no way concerns them. They are agreeable that the work be done by either of the union in that port. They say that inasmuch as the agreement was not made in behalf of the Everett Steamship Corporation, they have no labor controversy. The other respondents, the American President Lines, Ltd., and the Manila Steamship Co., although summoned, did not appear in this case and neither did they file any pleading with this Court or during the investigation of this case in Bacolod, Negros Occidental. However, Mr. Isabelo Atienza appeared during the investigation as the consignment agent for the three respondents, namely, the American President Lines, the Manila Steamship Co., and the Everett Steamship Corporation.

On July 18, 1946, in pursuant to the provisions of Commonwealth Act No. 103, this Court designated and ordered Mr. Paciano C. Villavieja, Assistant Attorney, to proceed to Bacolod, Occidental Negros, as its Commissioner, to hold and preside an arbitration conference between the parties in this case, to reach an amicable settlement if possible, and to hear the evidence of the parties if none is made by them. Commissioner Villavieja tried his best to reach a compromise among the parties but due to its impossibility, said Commissioner received the evidence of the parties on July 22, 23, 24 and 25, 1946.

Before the reception of the evidence, the Pulupandan Longshoremen Union presented its pleading of intervention on July 23, 1946, alleging that the said intervenor is a duly registered union with Registration Certificate No. 86; that they have entered into a collective bargaining contract with the herein respondent companies represented by their duly authorized agent, Mr. Isabelo Atienza; they questioned the juridical personality of the petitioning non-registered union having no right to enter into collective bargaining contract with the respondent companies. The intervenor, Pulupandan Longshoremen Union, further alleged that the contract signed between the Pulupandan Branch of the Federación Obrera de Filipinas and Mr. Isabelo Atienza is invalid as the same was obtained by misrepresentation, fraud, threat and intimidation. The said intervenor asked for the dismissal of this case.

On July 23, 1946, the Pulupandan Stevedores Union (CLO) also presented its intervention alleging that they have about 200 members; that in September, 1945, they were in charge of the loading and unloading service by virtue of a contract with the respondents' agent, Mr. Isabelo Atienza; that on April 24, 1946, while this intervenor

was unloading FS–197, the petitioner, through Mr. Zacarias Seminio who was then acting Municipal Mayor of Pulupandan, with the use of his police force who were provided with arms and by means of threat and intimidation drove away the members of the said intervenor union to unload Government cargoes of rice and relief goods. They were also deprived of unloading FS–224 on April 24, 1946, and that ever since this date, the said intervenor has been unjustly deprived of their work with the respondents in spite of their repeated demands.

Mr. Isabelo Atienza, consignment agent of the respondents, as an answer to the petitioner's complaint submitted to the Commissioner of this Court his letter dated June 23, 1946, addressed to Mr. Alfonso Dadivas, Acting Regional Supervising Public Defender, wherein he said that the Federación Obrera, Pulupandan Branch, and the Chinese merchants cannot force him to respect the collective bargaining contracts entered into between themselves as he believes that as consignment agent he has the absolute right to choose the men to work with him. That the Federación Obrera, Pulupandan Branch, obtained the work at the dock by force and intimidation. He alleged that Mr. Zacarias Seminio forced him to sign the collective bargaining contract between the Federación Obrera and himself by means of threats and intimidation. Mr. Zacarias Seminio was then acting Mayor of the municipality of Pulupandan, Negros Occidental, and that by the use of his policemen he was forced to sign the said collective bargaining contract after driving out the former laborers and threatening him with a sit-down strike unless the Federación Obrera was given the work. On April 23, 1946, when the FS–197 arrived in Pulupandan, said boat was being unloaded by laborers who were under Mr. Lamberto J. Doripes, but by threats and intimidation, Mr. Seminio drove these laborers out, putting in their stead the laborers of the Federación Obrera. Said contract of May 7, 1946, with the Federación Obrera was repudiated by Mr. Isabelo Atienza when the FS—362 steamer arrived in that port, and believing that his action was justified in view of the threats and intimidation that Mr. Seminio used in obtaining the contract with him, he allowed, on this date, the former laborers who now belong to the Pulupandan Longshoremen Union to return. He also stated that he could undo what was agreed upon in the office of the Provincial Governor, that is, giving the work to the unions by turn, inasmuch as the Public Defender made him to understand that he could personally select the laborers who can do the loading and unloading.

THE FACTS

From the pleadings, the arguments and the evidence presented to the Commissioner of this Court, the following facts were proven:

Before the war, Mr. Isabelo Atienza was the consignment agent for several ships stopping at the port of Pulupandan, Negros Occidental. With regards to the loading and unloading, it was the practice that the owners or consignees of goods pay not only for the freight but also for the unloading and loading expenses direct to the owner of the boats through their consignment agent, Mr. Atienza. The laborers unloading the cargoes were paid by the shipping companies direct by means of vouchers. The breakage on cargoes were paid by the shipping companies. After the American liberation and until now, the former practice was changed. The owners of the goods or their consignees do not pay the unloading charges to the shipping companies or their consignment agent. The said consignees, 90 per cent of which are Chinese merchants, entered into collective bargaining contract with groups of laborers who made and are making the loading and unloading in the port of Pulupandan. They pay the unloading charges direct to the labor groups. The latter pay for the breakage of cargoes due to unloading. The rate of payment for the unloading of these consigned goods is in accordance with the rate of charges which the merchants and the laborers have attached to their collective bargaining contracts as may be seen in Exhibits Annex A to A–27.

From September, 1945 to April 24, 1946, the loading and unloading service under Mr. Isabelo Atienza was given by oral contract to Mr. Lamberto J. Doripes, who selected and employed his own laborers. These Doripes laborers did not organize themselves as a labor union until April 12, 1946. On that date Mr. Doripes handed to Mr. Atienza the constitution and by-laws of the Pulupandan Stevedores Union (CLO).

On April 17, 1946, Mr. Zacarias Seminio, President of the Federación Obrera, Pulupandan Branch, demanded that the work of the Pulupandan dock be given to the said union. Mr. Zacarias Seminio on this date besides being President of the Federación Obrera, Pulupandan Branch, was the acting Mayor of the municipality of Pulupandan. On April 24, 1946, steamer FS–197 was being unloaded and that the Doripes group was at first unloading it. Mr. Zacarias Seminio stopped it, alleging that the cargo being unloaded on said steamer FS–197 were government cargoes consisting of rice and relief goods and that he was instructed to unload the same by the Provincial Treasurer of Negros Occidental. Mr. Atienza alleged in his testi-

mony that when Mr. Seminio suspended the work on the said steamer, he was accompanied by the Chief of Police, Mr. Jose Jacildo, and Mr. Baldebia, a Federación Obrera foreman, who had a revolver on his hip besides the other policemen. Mr. Atienza appealed to Mr. Seminio not to stop the work and not to drive away the first group of laborers under Mr. Doripes. He appealed to the Military Police Command under Captain Ramon de Leon, but of no avail. The laborers, therefore, of the Federación Obrera, Pulupandan Branch, finished the work of unloading the FS–197. They also unloaded steamer FS–224.

On May 7, 1946, the FS–269 arrived in Pulupandan. Mr. Zacarias Seminio, accompanied by the Public Defender, Mr. Sotto, threatening a sit-down strike, made Mr. Isabelo Atienza sign a bargaining contract, Exhibit Annex B. According to Atienza, not to delay the boat, although he did not like and hesitated to sign the said contract, he having no instruction from the shipping companies in Manila, when the phrase "for the time being" was added in that document, he signed it involuntarily. The Federación Obrera, Pulupandan Branch, now lay claims to the right of loading and unloading due to the above contract of May 7, 1946. On the other hand, Mr. Atienza alleged in his testimony that he was forced to sign it because of threats and intimidation committed by Mr. Zacarias Seminio and his laborer-companions.

On May 28 and May 29, 1946, the Pulupandan Longshoremen Union and the Pulupandan Stevedores Union (CLO), respectively, applied for bargaining contract with Mr. Isabelo Atienza, and on May 31, 1946, said Mr. Isabelo Atienza accepted the offer of these two unions as per Exhibit A of the intervenor, the Pulupandan Stevedores Union (CLO), and Exhibit B of the intervenor, the Pulupandan Longshoremen Union.

On June 15, 1946, the steamer FS–362 arrived in Pulupandan and there were three groups of laborers who wanted to work on this ship, namely, the Federación Obrera, Pulupandan Branch, and the laborers belonging to the Pulupandan Longshoremen Union and also the laborers of the Pulupandan Stevedores Union (CLO). So on this date there was trouble by the presence of contending laborers of the three unions. A conference, therefore, was called by Mr. Atienza which took place at the municipal building on June 15 to thresh out this trouble. In this conference were present: the acting Public Defender, Mr. Sotto; Lt. Manuel Palacios, vice-president of the Federación Obrera de Filipinas; Mr. Eulogio Mate, labor agent; Mr. Diaz, deputy governor; MPC Lt. Ocampo; Atty. Ruperto Javier; Mr. Elpidio Serpino, President of the Pulupandan Longshoremen Union; Mr. Isabelo Atienza; and others. In this

conference, Mr. Atienza repudiated his contract signed with the Federación Obrera on May 7, 1946. No agreement was reached by the parties so the Provincial Governor intervened, suspended the work, and called the parties for a conference in his office at Bacolod, Negros Occidental, to thresh out this labor conflict. He then appointed a committee of three composed of the provincial fiscal, the representative of the public defender's office, and the Provost Marshal. This committee approved a resolution dated July 5, 1946, Exhibit A (page 125 of the record). On June 17, 1946, the Compromise Agreement, Annex C, was signed by the parties, Zacarias Y. Seminio, President of the Federación Obrera de Filipinas, Pulupandan Branch, Elpidio Serpino, President of the Pulupandan Longshoremen Union, and Isabelo Atienza, in-charge of the consignment office, agreeing that the work of unloading the cargoes on FS–362, then docked at Pulupandan, should be given to the Federación Obrera. It was further agreed that the cargoes of the next boat arriving at Pulupandan should be handled by the Pulupandan Longshoremen Union and thereafter, all the cargoes of the boats of the respondent companies would be handled alternately by the two unions until the controversy can be finally decided by the proper Court.

Due to this agreement made at the Governors' office, the laborers of the Federación Obrera unloaded the cargo on FS–362. Succeeding boats were unloaded alternately or by turn by the two unions. On July 5, 1946, steamer "Old Special" of the Manila Steamship Company arrived in Pulupandan. It was the turn of the Federación Obrera to do the work, but the Pulupandan Longshoremen Union did the work, as it tried to do on June 15, 1946, following the repudiation of the contract of May 7, 1946, by Mr. Isabelo Atienza. The Pulupandan Longshoremen Union questioned the right of the Federación Obrera, Pulupandan Branch, to enter into an agreement with Mr. Atienza because it is not registered in the Department of Labor, according to the letter of Mr. Lanting of June 26, 1946, Exhibit C of the intervenor, the Pulupandan Longshoremen Union. Mr. Atienza supported this theory, alleging further, that he was authorized by the Governor and the Public Defender to select the union which he wants to work for him. Since July 5, 1946, the Federación Obrera have been excluded in the stevedoring work. Policemen have been stationed at the gate of the pier excluding their laborers.

It can be clearly seen from the above facts that there is a three cornered fight between the three labor unions to get the work. From September, 1945, to April 24, 1946,

the Doripes labor group had the contract for the loading and unloading of cargoes at the Pulupandan port. They subsequently organized as the Pulupandan Stevedores Union (CLO). Although some of the members have joined the Federación, others went to the Pulupandan Longshoremen Union. There is no doubt that this Doripes group, now the Pulupandan Stevedores Union (CLO), still exists as a union and is fighting to get the work. Then Mr. Zacarias Seminio, who was then acting Mayor of the municipality of Pulupandan, organized also the Pulupandan Branch of the Federación Obrera on February 18, 1946. They were authorized by Jose M. Nava, Supreme General President of the Federación Obrera de Filipinas, with central office at Iloilo, but said branch until now is not registered yet in the Department of Labor. This union grabbed the work from the Doripes group, now the Pulupandan Stevedores Union (CLO). This union is also asking that by virtue of their contract with Mr. Atienza of May 7, 1946, they should be given the right to work. On the other hand, Mr. Isabelo Atienza, alleging that the said contract is null and void as his approval and signature were secured by the use of threats and intimidation, gave the work to the Pulupandan Longshoremen Union. This union is also claiming the right to do the stevedoring work in that port.

From the evidence it can be seen that there are two contracts entered into in this case which will guide this Court as to the existence of collective bargaining contract. *First,* the Federación Obrera, Pulupandan Branch, signed a contract with different merchants in the City of Bacolod to unload goods from ships stopping at the port of Pulupandan (Exhibits Annex A to A–27, Pages 4–34 of the record), with a tariff schedule attached to each contract as a part of it. *Second,* the other agreement is contained in Exhibit Annex B (page 36 of the record), signed by Mr. Zacarias Y. Seminio as representative of the Federación Obrera, Pulupandan Branch, and Mr. Isabelo Atienza, agent of the Pulupandan consignment office. This instrument contains this proviso in its last paragraph: "2. That the charges for such loading, unloading, and handling of said cargoes shall be collected direct from the owner of said cargoes *without the intervention* of the party of the first part." In this second document, it will be clearly noted that Mr. Isabelo Atienza, does not pay the consideration or *causa* and it is clearly provided that the collection for loading and unloading *shall be made without his intervention.*

The essential requisites for the validity of contracts are provided in article 1261 of the Civil Code, which says: "There is no contract unless the following requisites are

present: 1. Consent of the contracting parties. 2. A definite object which is the subject matter of the contract. 3. Cause (*causa*) of the obligation which is established." Testing these documents from the above requisites, there is no doubt that complete contracts of collective bargaining exist between the merchants of Bacolod and the Pulupandan Branch of the Federación Obrera. On the other hand, the second contract besides being attacked as invalid, secured through threats and intimidation, there appears to be no cause (*causa*) or consideration. The contract between Mr. Atienza and the Federación Obrera is incomplete. It lacks consideration besides being made and signed with the use of threats and intimidation on the part of Mr. Seminio.

The existence of the collective bargaining between the merchants and the Federación Obrera, Pulupandan Branch, can be clearly seen in the answers made by Mr. Zacarias Seminio to questions made by the Commissioner of this Court as follows: (page 74 of the record) *"Question:* So that in that case, do you consider yourselves the laborers of the owners of the cargoes or of the shipping companies? *Answer:* We consider ourselves the laborers of the owners of the cargoes and not the laborers of Mr. Atienza." On page 7 of the record, this question appears: *"Question:* So we understand from you that the collective bargaining contract which you have entered into with Mr. Atienza is for the purpose of recognizing you as a union, but does not make you the laborers of Mr. Atienza, nor of the shipping companies? *Answer:* No. We are the laborers directly of the owners of the cargoes. The intervention there of Mr. Atienza is only to see that our men enter the boat to begin the loading and unloading of the cargoes." From the last part of the answer of Mr. Seminio, it can be interpreted that the intention of making Mr. Atienza sign the so-called collective bargaining contract of May 7, 1946, was to allow only the laborers of the Federación Obrera, Pulupandan Branch, to enter the vessels and do the stevedoring service.

Incidentally, the Department of the Interior, through Brig. Gen. Macario Peralta, went to Pulupandan in the interest of peace and order. On July 26, 1946, Gen. Peralta reported that the present Mayor of Pulupandan, Mr. Bonifacio Montilla, intervened in this labor dispute and allowed all residents of the municipality of Pulupandan, whether belonging to the Federación Obrera or the Pulupandan Longshoremen Union, to work in the docks pending the settlement of this dispute by the Court and to the satisfaction of all concerned.

QUESTIONS INVOLVED AND THE LAW

In a nutshell, after considering the allegations and petitions of the pleadings and the evidence presented in this case, the questions involved are:

1. Is there any industrial dispute between the petitioner and the respondents including the intervenors?

2. Has this Court jurisdiction to intervene and decide which union among the three has the right to do the stevedoring work in Pulupandan, Negros Occidental?

Commonwealth Act No. 103, as amended, creating the Court of Industrial Relations, expressedly mentions its main purpose, to afford protection to labor by authorizing it to fix minimum wages for laborers and to enforce compulsory arbitration between employers and employees.

Section 4 provides that "the Court shall take cognizance for purposes of prevention, arbitration, decision, and settlement, of any industrial or agricultural dispute causing or likely to cause a strike or lockout, *arising from differences* as regards *wages, shares or compensation, dismissals,* layoffs, or suspension of employees or laborers, tenants, or farm-laborers, hours of labor, or conditions of tenancy or employment, between employers and employees or laborers and between landlords or tenants or farm laborers, provided that the number of employees, laborers or tenants involved exceeds thirty, and such industrial or agricultural dispute is submitted to the Court by the Secretary of Labor, or by any or both of the parties to the controversy. . . ."

This case is simply a fight between three unions as to which of them should get the work, or refers to the execution of an arrangement made regarding stevedoring work in Pulupandan. It does not involve a dispute between an employer and employee or laborer regarding wages, hours, and conditions of work.

While this Court recognizes the necessity and the freedom that all physically capable men and women should have in search of work for his individual and family sustenance, yet it has no power to settle disputes of labor war among laborers.

In the case of Ang Tibay *versus* the Court of Industrial Relations and National Labor Union Incorporated, the Supreme Court said that in order that the Court of Industrial Relations may, in accordance with sections 1 and 4 of Commonwealth Act No. 103, acquire jurisdiction, the following must be present: (1) There must be an industrial dispute or conflict; (3) The conflict or dispute must be between an employer and more than thirty laborers; (3) The conflict or dispute must be due to differences arising out of wages, hours of labor, etc.; (4) The conflict may give rise to strike or lockout; (5) Certification of the Secretary of

Labor on the existence of such conflict and the necessity of the intervention of the Court of Industrial Relations for the good of the public interest; and (6) The intereven-tion of the Court may either be for purposes of prevention, arbitration, decision and settlement.

Clearly, from the above authorities, this Court lacks the power to intervene and decide this case.

ORDER

In view of the above facts and considerations, this Court concludes that it has no jurisdiction and, therefore, hereby orders the dismissal of this case.

So ordered.

Manila, Philippines, August 17, 1946.

VICENTE DE LA CRUZ
Associate Judge

REPUBLIC OF THE PHILIPPINES
COURT OF INDUSTRIAL RELATIONS
MANILA

[CASE NO. 10–V]

MANGGAGAWANG PINAGYAKAP (CLO), Petitioner

VERSUS

CANLUBANG SUGAR ESTATE (Desiccated Coconut Department), Respondent

BISIG NG CANLUBANG (NLU), Intervenor

DECISION

STATEMENT OF THE CASE

On March 7, 1946, pursuant to Commonwealth Act No. 103, the Honorable, the Secretary of Labor, certified to this Court the existence of an industrial dispute between the petitioning union, Manggagawang Pinagyakap (CLO), and the Canlubang Sugar Estate (Desiccated Coconut Department) as respondent, involving around 500 laborers. While this case was pending investigation and arbitration in the Department of Labor, on February 23, 1946, the laborers stopped working. This is the first strike. Said petitioner is a non-registered union under Commonwealth Act No. 213 although its affiliated mother union, the Congress on Labor Organization, is a duly registered union with permit from the Department of Labor. This dispute does not involve the whole Canlubang Sugar Estate but only the Desiccated Coconut Department. The amended demands of the

petitioning union with the respondent company were as follows:

"1. That the actual payment of ₱1.60 per thousand nuts to shellers be increased to ₱4.

2. That the actual payment of ₱1.40 per thousand nuts to parers be increased to ₱4.

3. That the minimum wage of every daily wage earner should be ₱4.50.

4. That rice allowance of one (1) ganta of rice for every laborer or worker in the Desiccated Coconut Factory be continued. If there is no rice available, its equivalent cost should be given to us.

5. That in case of factory stoppage because of machine trouble, the said rice allowance should also be given to us.

6. That every worker employed by the company should be given a living quarter.

7. That we should be paid weekly, or on every Saturday morning. That only two days—Friday and Saturday—be left unpaid but which will be paid the following week.

8. That those who will work overtime should be given an additional increase of 50 per cent to their regular pay.

9. That an increase of 100 per cent should be added to the regular pay for those who will work during Sundays and holidays.

10. That our union should be duly recognized by the management of the Company.

11. That our right to bargain collectively should be recognized by the company. This is to understand that in cases of lay-off, dismissal, admittance of new employees, and any misunderstanding that may arise, both parties—the company and the union—should exert all their best efforts in finding ways and means by which such problems could be amicably settled.

12. That any worker who is unable to work due to sickness must be given her or his corresponding pay with the exception, however, that his illness is due to venereal diseases."

On March 14, 1946, the Bisig Ng Canlubang (NLU), a duly registered union with the Department of Labor, presented its petition of intervention, containing the following demands against the respondent company:

"(*a*) That the actual rate of ₱1.60 paid per 1,000 nuts to shellers be increased to ₱5;

(*b*) That the actual rate of ₱1.40 paid per 1,000 nuts to parers be increased to ₱5;

(*c*) That a minimum wage of ₱5 per day should be paid to the ordinary laborers;

(*d*) That all laborers who are required to work overtime should be paid an additional 50 per cent over their regular wages;

(*e*) That an additional 100 per cent over the regular wage should be paid for work done on Sundays and official holidays;

(*f*) That a rice allowance of one ganta should be given for each working day.

(*g*) That the usual practice of giving free hospitalization to the laborer and his family should be resumed;

(*h*) That sick leave should be paid; and

(*i*) That the collective bargaining contract entered into between the petitioner-intervenor and the respondent should be strictly complied with by the parties and that in case of any misunderstanding between them, both should exert all efforts to find ways and means

to settle them amicably and especially to the satisfaction of the members of the Bisig ng Canlubang."

The petitioning union, upon the filing of the demands of the intervenor, amended also its demands by adopting for that union the demands of the Bisig Ng Canlubang.

After several endeavors to have the parties reconcile their dispute and after the case was set for hearing, through the intervention of the Court, the parties came to a temporary agreement which was approved by this Court in its order of March 14, 1946. Said order contains the following temporary basis of settlement:

"(1) That the actual pay of ₱1.60 per thousand coconuts to shellers be, and is hereby increased to ₱4 per thousand coconuts;

(2) That the actual pay of ₱1.40 per thousand nuts to parers be, and is hereby, increased to ₱3.75 per thousand nuts;

(3) That the minimum pay of the daily wage earners be, and is hereby, fixed at ₱3.60 for men; ₱3.50 for women; ₱4.20 for electricians; and for foremen paid by the day, 20 per cent increase over their actual basic wage;

(4) That the payment of wages to the laborers shall be made every two (2) weeks;

(5) That for overtime work on ordinary labor days, there shall be paid an additional 50 per cent over the amounts hereinabove specified;

(6) That for work performed on Sundays and holidays, the laborers shall be paid an additional 50 per cent increase;

(7) That the respondent company shall continue for furnishing the laborers with free quarters, water and light, but the daily rice ration of one ganta shall be suspended as the money equivalent thereof has already been included and taken into account in granting the increase in pay hereinabove agreed upon;

(8) That all the laborers of petitioner who declared strike shall return to their work and report for duty not later than March 19, 1946, and the respondent company shall admit said laborers and shall not discriminate against nor lay-off or dismiss any of them without the previous permission of the Court;

(9) That the new schedule of wages hereinabove mentioned shall become effective for those laborers who walked out, from the day on which they report for duty; and for those who did not strike, from March 19, 1946."

With respect to the demands of the petitioner and the intervenor which were not touched upon by the above agreement, Atty. Emilio Lopez, Acting Chief of the Division of Investigation of this Court, was appointed and delegated by this Court to be its commissioner to receive the evidence of the parties and to submit his report to the Court for its action. Messrs. Severo Abellera and Manuel V. Andrade of the Examining Division were also directed to proceed to Canlubang, Calamba, Laguna, to examine the books, accounts and other papers or documents of the respondent corporation and to submit to this Court its financial condition, specially the business of the Desiccated Coconut Department. These examiners sub-

mitted their report which are attached to the record of this case.

The Commissioner held sessions several times in Canlubang and also in Manila to receive the oral and documentary evidence. He did his best to convince the parties to reach an amicable settlement.

On June 15, 1946, the petitioning union declared a second strike and until now they have not yet returned to work.

THE FACTS

The desiccated coconut factory involved in this industrial dispute is one of the departments of the Canlubang Sugar Estate leased on January 1, 1946, to the Franklin Baker Company of San Pablo, Laguna, manufacturing desiccated coconut. The Franklin Baker Company, under the lease contract, pays for the materials and expenses of operation. The Canlubang Sugar Estate receives as payment 10 per cent of the total value of the raw materials and manufacturing expenses. The Canlubang Sugar Estate also receives the payment of the coconuts gathered in its farm.

This department started its work in February, 1946. Before the war, the Bisig Ng Canlubang Union, a duly registered union in the Department of Labor, had a collective bargaining contract with the Canlubang Sugar Estate. When the work was started in this department last February, only a portion of the laborers of the Bisig Ng Canlubang were available, so that the greater portion of the laborers who were employed in the said Desiccated Coconut Department were recruited from San Pablo, Laguna. The evidence shows that many of these laborers were and are members of the Manggagawang Pinagyakap of the town of San Pablo. Before the first strike, these laborers coming from San Pablo were not yet organized as a union in the Desiccated Coconut Department although many of them were members already of the said Manggagawang Pinagyakap of San Pablo, Laguna. After the declaration of the strike these laborers organized themselves to become the Manggagawang Pinagyakap (CLO). The petitioners presented Exhibit A to show the membership of this new union which, according to Mr. Alfredo Castillo, is a branch of the Manggagawang Pinagyakap of San Pablo, Laguna, in the Desiccated Coconut Department of the Canlubang Sugar Estate. They also presented Exhibits B to B–7, containing the signatures of the alleged members of the Manggagawang Pinagyakap (CLO) in the Canlubang Sugar Estate. The evidence shows, however, that many of the signatures appearing in Exhibits B to B–7 were never identified. Some of these signatures were denied and several were admitted but witnesses explained that

they signed the said exhibits just to get an increase in salary but with no intention of becoming members of the Manggagawang Pinagyakap as they are members of the Bisig Ng Canlubang. The Manggagawang Pinagyakap (CLO) in the Desiccated Coconut Department of the respondent company is not registered in the Department of Labor under Commonwealth Act No. 213, although affiliated to the Congress on Labor Organization (CLO) already registered and permitted as a labor organization in the Department of Labor.

There are around 500 laborers working in the Desiccated Coconut Department of the Canlubang Sugar Estate, 200 of whom belong to the Manggagawang Pinagyakap, quite a number to the Bisig Ng Canlubang, and the others are not members of either of the two unions. It appears on record that on July 6, 1946, the Bisig Ng Canlubang, affiliated to the National Labor Union, both registered in the Department of Labor, entered into an agreement with the Canlubang Sugar Estate while the case was pending consideration in this Court which, among several things, is a proviso recognizing the existence of a closed shop agreement between the two parties. Said agreement was approved by this Court in its order of July 16, 1946.

The first strike which was declared on February 23, 1946, was caused by the failure of the Canlubang Sugar Estate to furnish rice to the laborers as agreed upon when the said laborers were recruited for the Desiccated Coconut Department. The living expenses in Canlubang are much higher than in Manila. However, this rice trouble was solved by the parties in open Court when they entered into a temporary amicable settlement which was approved by the Court in its order of March 14, 1946, already mentioned and quoted in the statement of the case of this decision. The laborers, therefore, went back to their work. All the other questions still unsolved between the parties were to be tried and decided by this Court.

While this case was being heard by the Commissioner of this Court on June 18, 1946, the attorney for the respondent company reported that on June 15, 1946, the laborers struck again. This is the *second strike*. The immediate cause of this strike, according to the petitioning union, is the fact that there was discrimination in the granting of "vales to workers, residents of the Canlubang Sugar Estate.

According to the testimony of Mr. Alfredo Castillo, president of the Manggagawang Pinagyakap, Canlubang Branch, in the morning of June 15, 1946, upon request of some laborers belonging to his union and several not belonging to it, he approached the management to request for "vales" or cash advances. Mr. Earl T. Dayton answered them that he could not grant their request, so they left the office.

These laborers who were asking for cash advances did not work any more, but picketted, preventing the others from working also. This picketting was called by them as "Wild Cat Strike." Although they deny that it was a union strike, yet on the same date they presented a letter to the management, appearing on page 107 of the record, wherein they asked that (1) from the date they were forced to stop working the management should give them their daily wage as usual and (2) they request from the management the settlement of the demands of the workers who declared the strike as soon as possible in order to prevent further damage to the workers of the company. It is to be noted that in the above demand nothing is mentioned about the issuance of "vales" or cash advance. Previous to June 15, 1946, that is, after the temporary settlement of March 14, 1946, there was no complaint about this "vale" discrimination. The second strike, therefore, came like a whirlwind, with no signal at all. It became known only when the said strike was in effect already. For this strike suddenly declared by the said laborers, they ask the company to pay them during the period of that strike. There is no doubt that the laborers who belong to the Manggagawang Pinagyakap (CLO) are the ones who started the strike which became general in the Desiccated Coconut Department. On the other hand, the Bisig Ng Canlubang says that inasmuch as the work of laborers depended upon the work of Pinagyakap laborers, they were forced also to stop working.

In the discussion resulting in the temporary settlement which enabled the laborers to return to their work after the first strike, although there was no express agreement between the parties, it appears on record (page 129 of the stenographic transcript) that the understanding with respect to the granting of "vales" or cash advances was made by Mr. Earl T. Dayton, Manager of the Canlubang Sugar Estate. The statement of Mr. Dayton follows: "Every Desiccated Coconut people can come to an agreement whereby those who live on *far distant places* could borrow advance money; that could be arranged. But they have to agree wholeheartedly so we can eliminate conflict and arguments absolutely without any disturbance or force. But others will say "bakit sila meyroon, kami wala. (Why others have and we, none.)" It was, therefore, the understanding that only those who are living far from Canlubang could secure "vales." This practice or manner of giving "vales" or cash advances is admitted by Mr. Alfredo Castillo, that only those who live far from Canlubang are given this privilege. Mr. Dayton, regarding the question of whether or not the workers who are residents of Canlubang were given cash advances, explained that he is not sure whether there are residents of Canlubang who have been given

"vales" or cash advances. He has not checked them up. However, he said that it may be possible that there may be workers who were non-residents of Canlubang before but who transferred to Canlubang already and not known to the company they were given cash advances. They also cited cases of residents of Canlubang who were given cash advances in time of necessity such as marriage, accident, etc.

QUESTIONS INVOLVED

Besides the question on the merit of the demands, it is necessary to solve the legality of the second strike of June 15, 1946.

The striking laborers not only failed to use due diligence in securing first an amicable settlement of the "vale" system from the management, but they utterly failed to respect the Court that was created by law to administer justice and equity and settle industrial disputes between labor and capital, fully knowing that their case was pending hearing and decision in the Court of Industrial Relations.

We abhor and highly condemn any kind of injustice to our workingman, but, equally, we must condemn also the high-handed, ill-advised and useless labor practices of no practical utility to labor itself and causing complete stoppage of work to the prejudice of the needy laborers and obstructing the rapid rehabilition of our industries destroyed or damaged by the war. Capital must uplift labor but labor also must give life to capital. They are the two wheels of the nation which must go together.

The Supreme Court of the Philippine Islands, in the case of the National Labor Union, Incorporated, et al., petitioner, *versus* Philippine Match Factory and the Court of Industrial Relations, respondents, (Vol. 40, *Official Gazette*, No. 12, page 135), said with reference to the right of labor to strike: "The recognition, if at all, by law of the laborers' right to strike is, at most, a negative one, and, in the last analysis, nugatory. The provision of the Constitution on compulsory arbitration of industrial disputes and all the suppletory legislation enacted in pursuance thereof, rest upon the obvious policy of supplying lawful and pacific methods to laborers and employees in the vindication of their legitimate rights and the corresponding avoidance of a resort to strike. Thus, according to the explanatory note to Assembly Bill No. 700, which later became the present Commonwealth Act No. 103, the creation of the Court of Industrial Relations was aimed to supply an 'adequate instrumentality to forestall strikes.' The same purpose is no less clearly expressed in section 4 of Commonwealth Act No. 103. It is thus obvious that, while the law recognizes, in a negative way, the laborers' right to strike, it also

creates all the means by which a resort thereto may be avoided. This is so, because a strike is a remedy essentially coercive in character and general in its disturbing effects upon the social order and the public interests."

"A situation is thus created where a remedy is not, in plain terms, outlawed, but is, by all means, discouraged. And, to the extent that our Government is one of laws and not of men, what the law, at least in spirit, condemns, man must abstain from, if our orderly system is to prevail against the intrusion of mob rule. Accordingly, as the strike is an economic weapon at war with the policy of the Constitution and the law, a resort thereto by laborers shall be deemed to be a choice of a remedy peculiarly their own, and outside of the statute, and, as such, the strikers must accept all the risks attendant upon their choice. If they succeed and the employer succumbs, the law will not stand in their way in the enjoyment of the lawful fruits of their victory. But if they fail, they cannot thereafter invoke the protection of the law from the consequences of their conduct, unless the right they wished vindicated is one which the law will, by all means, protect and enforce."

In this case the strike was clearly unjustified. The giving of cash advances was limited to those workers who were living far from Canlubang. Before June 15, 1946, there was no complaint regarding discrimination in the giving of these cash advances. In the morning of June 15, 1946, only about fifteen requested Mr. Alfredo Castillo to accompany them to the management to secure cash advances, which petition was denied by Mr. Earl T. Dayton in a joking way thinking that the laborers would not take it seriously. The union did not only fail to take up this question seriously with the management, but those who were affected, namely, fifteen, was a small group, comparing with the 500 or 600 laborers working in the desiccated coconut factory. If they failed to get the remedy from the management, it was their duty to appeal to the Court of Industrial Relations to secure this privilege before declaring a strike. There can be no doubt, therefore, that the said strike was not only unreasonable but was unjustifiable and illegal.

With respect to the other demands of the laborers, the evidence shows that the cost of living in Canlubang is much higher than in the City of Manila, that is why the management agreed to raise the salaries of the shellers, parers, mechanics and daily laborers, as may be seen in the order approved by this Court dated March 14, 1946. The financial examination also of the company shows that the respondent company can afford to give a reasonable increase to the salaries of the laborers.

ORDER

In view of the above facts and consideration, *First*, the strike of June 15, 1946, well known to Mr. Alfredo Castillo president of the Manggagawang Pinagyakap (CLO), and followed by the other laborers of the Desiccated Coconut Department, is hereby declared unjustified. The laborers, by virtue of this strike, are not entitled to the payment of their salaries during the strike and that their return to their work is hereby made discretionary on the part of the management of the Canlubang Sugar Estate by virtue of the illegal strike made by them on June 15, 1946, and the existence of a closed shop contract between the Canlubang Sugar Estate and the Bisig Ng Canlubang, already approved by this Court in its order of July 16, 1946. *Second*, in view of the high cost of living in Canlubang, and that the company is in a financial position to give reasonable increase to the laborers, said respondent company is hereby ordered to follow the following schedule of payment to its laborers, to wit: (*a*) that the actual pay of ₱1.60 per thousand coconuts to shellers be, and is hereby, increased to ₱4.50 per thousand coconuts; (*b*) that the actual pay of ₱1.40 per thousand nuts to parers be, and is hereby, increased to ₱4.25 per thousand nuts; (*c*) that the minimum pay of the daily wage earners be, and is hereby, fixed at ₱4.10 for men, ₱4 for women, ₱4.70 for electricians, and for foremen paid by the day 25 per cent increase over their actual basic wage; (*d*) that the payment of wages to the laborers shall be made every two weeks and that the present practice followed by the company to grant "vales" or cash advances to laborers living far from Canlubang is hereby approved and authorized and that it may grant also in cases of necessity, such as death, sickness, accidents, marriage and baptism; laborers who are residents of Canlubang may also be granted cash advances depending exclusively upon the discretion of the management; (*e*) that for overtime work on ordinary labor days, they shall be paid an additional 50 per cent over the amounts hereinabove specified; (*f*) that for work performed on Sundays and holidays, the laborers shall be paid an additional 50 per cent increase (*g*) that the respondent company shall continue furnishing the laborers with free quarters, water and light, but the daily rice ration of one ganta is eliminated as the same or the value of it is already included in the increases above provided for and authorized; (*h*) that in the agreement of July 6, 1946, approved by this Court on July 16, 1946, it was agreed between the Canlubang Sugar Estate and the Bisig Ng Canlubang union that "all workers of the company shall be entitled to fourteen (14) days sick leave pay for

each year of service, which shall be liquidated and paid every six (6) months. Workers leaving the service of the company any time before the liquidation date shall receive their sick leave pay on the respective dates they sever connections with the company, which sick leave pay shall be in proportion to the number of days each one worked during the period." This proviso is also approved and authorized as a part of this decision together with the old practice of giving free hospitalization to the laborer and his family; (*i*) that the herein new schedule of wages shall become effective from the day on which the company starts operation again and the laborers report for duty.

In view of the fact that the Manggagawang Pinagyakap (CLO), Canlubang Branch, is not registered in the Department of Labor in accordance with the provisions of Commonwealth Act No. 213, said union has no right to collective bargaining with the Canlubang Sugar Estate. On the other hand, inasmuch as the Bisig Ng Canlubang (NLU) is a duly registered and permitted union in the Department of Labor, its right to collective bargaining is hereby recognized.

So ordered.

Manila, Philippines, August 22, 1946.

VICENTE DE LA CRUZ
Associate Judge

RESOLUTIONS OF THE COURT OF INDUSTRIAL RELATIONS

REPUBLIC OF THE PHILIPPINES
COURT OF INDUSTRIAL RELATIONS
MANILA

[CASE No. 13–V]

TELEPHONE WORKERS' UNION (CLO), Petitioner
VERSUS
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, Respondent

ORDERS

After a strike declared by the petitioner against the respondent, the dispute was certified to this Court by the Department of Labor for arbitration. In a spirit of co-operation and frank understanding, the parties effected a temporary settlement of the dispute which led to the resumption by the laborers of their work with their employer. The hearings called were simply conferences between the parties in order that they might bargain collectively under the guidance of the Court. It is indeed a great satisfaction to note the salutary effects of a collective bargaining done in good faith by the parties, with no other consideration in their minds that the welfare of both capital and labor which should always complement and supplement each other in the multifarious activities in the industrial field. The object of collective bargaining being to "reason together" or "to create a common idea" (Isaiah I, 18; and M. P. Follette in *The New State*), we can not but encourage this practice for the good of industry. It has been said that collective bargaining is a foundation stone of industrial democracy. The Court, in emphasizing the importance of collective bargaining, can not but reproduce hereunder what is said on the subject:

"Collective bargaining, then, is a method whereby management and labor can exchange practical experience and suggestions relating to the job. It is collective because it is based upon the cumulative, pooled experience of many workers, thrashed out through their union, weighed, sifted, fused into a living body of principles and into a living program. Their union experience and union program may be pointed

to the specific job, to the trade, or to the industry; may be put to the test of production. *It is bargaining because at any one time the program is adaptable to the practical situation. It is bargaining because there is give and take of experience. The knowledge of production which labor possesses, and the knowledge which management possesses supplement each other, each side yielding here and gaining a point there.* Then the end result has the more practical strength of both points of view; it is richer and more pointed to the job of production than if it had developed on a narrower or less realistic base." (*What Is Collective Bargaining*—By Mollie Ray Carroll, Pages 28–29.)

The present case, therefore, is the result obtained through this method. And after several conferences, on July 19, 1946, the parties arrived at an amicable settlement of their dispute, executed, signed, and acknowledged an agreement to the effect before the Clerk of Court and submitted the same for approval.

AGREEMENT

The Telephone Workers' Union (CLO), petitioner, represented in this act by its duly authorized president, Mr. Ananias Gozo, and the Philippine Long distance Telephone Company, respondent, duly represented in this act by its authorized vice-presidents, Messrs. Theo. L. Hall and Jose S. Galvez, after a series of conferences, hearings and negotiations, have agreed as follows:

DEMAND NO. 1

Both parties agreed that the terms and conditions appearing in Exhibit A (*) which formed part of the working conditions prevailing in the company before the war in so far as it concerns medical, surgical and hospital services shall continue to be observed as part of the working conditions in the respondent company except as hereinbelow stipulated:

1. Respondent will submit to the Board of Directors or the company the following benefit plan: "one-half (½) month's pay for every year of service to any employee who might die while in the service of the company and who has served the company for less than ten (10) years previous to such death, provided, however, that the total amount thereof is not to exceed one thousand pesos (₱1,000); an employee who has served for ten (10) years or more will receive one-half (½) month's salary for every year of service, the total amount of which is not to exceed two thousand pesos (₱2,000); such payment is to be made to the employee's legal dependant," and petitioner agrees to abide by the decision of the Board of Directors.

2. Respondent will also submit to the Board of Directors of the company the demand of the petitioner that the one-half (½) pay as provided in paragraph 13 of Exhibit A be extended from six (6) months to one (1) year, and that the petitioner agrees to abide by the decision of the Board of Directors.

3. Respondent agrees to submit to the Board of Directors of the company petitioner's contention that while a man is on sick leave which may be six (6) months or one (1) year as may be decided by the Board of Directors, his position should not be filled except temporarily so that if and when the employee is certified by the company physician to have fully recovered and fit to work and that

* See pages 2968–2970 herein.

employee applies for his old job, he may be reinstated in his old position during that time of six (6) months or one (1) year of sick leave, and petitioner agrees to abide by the decision of the Board of Directors in the matter.

4. Petitioner contends that the two (2) weeks period provided in paragraph 3 of Exhibit A should be extended to four (4) weeks, but respondent rejects this demand on the ground that this concession is liberal enough under any circumstances. Both parties agree to submit this matter to the company's Board of Directors, by whose decision the petitioner agrees to abide.

5. Petitioner contends that medical, surgical and hospital services accorded to female employees in abnormal or emergency cases be also extended to those under normal maternity confinement, but respondent rejects this demand on the ground that they are not in a position to give further concessions than those now granted. So both parties agree to submit this matter to the company's Board of Directors by whose decision the petitioner agrees to abide.

6. Petitioner contends that the half pay during confinement under paragraph 7 of Exhibit A be made full pay. Respondent cannot grant this demand, so both parties agree to submit the matter to the company's Board of Directors by whose decision the petitioner agrees to abide.

7. Petitioner demands that the "₱46.25 a week" and "₱200 a month" in paragraph 8 of Exhibit A be increased to ₱300 a month, but respondent rejects this proposition because of its inability to alter the conditions embodied in Exhibit A without the consent of its Board of Directors, and so both parties agree that this matter will be submitted to the Board of Directors in whose decision petitioner agrees to abide.

DEMAND NO. 2

Both parties agree to the job classifications, well as to the rates of pay as set forth in the attached schedule, Exhibit 2 under column of "Compromise," consisting of ten (10) sheets, for the present employees of the Philippine Long Distance Telephone Company and that these rates are based on emergency post war conditions and are subject to change when conditions warrant. These rates of pay will take effect as of the date of this agreement.

DEMAND NO. 3

Demand No. 3 is withdrawn.

DEMAND NO. 4

Respondent grants petitioner's demand that all employees included in the payroll of December, 1941, be given priority in reemployment, and petitioner has withdrawn the last part of this demand concerning civilians employed by the Signal Corps of the U. S. Army.

DEMAND NO. 5

Demand No. 5 is withdrawn and substituted with the following: 'That the Telephone Workers' Union (CLO) be given the right of check-off with respect to its members employed by the company."

Both parties agree that either the treasurer of the Union or some other employee designated by him who is not, in the opinion of the

company, a very essential employee, may accompany the paymaster on one pay-day every month in order to collect union dues, fees, and other financial obligations due the union; that during such time, as he is so engaged, he will not be paid by the company; that whatever happens to the funds so collected by him under any circumstances or combination of circumstances, the company shall have no responsibility therefor, and also he will give his word of honor that he will not devote company's time to union matters at other times.

DEMAND NO. 6

Respondent grants demand No. 6 in the sense that there should be no discrimination against any member of the organization because of his union activities or union affiliation, provided the same do not diminish his efficiency as an employee.

Both parties submit the foregoing agreement to the Court for its approval and decision according to the tenor thereof.

In witness whereof, the parties have hereunto affixed their signatures this 19th day of July, 1946, at the City of Manila, Philippines."

The said agreement, not being contrary to law and public policy, is hereby approved and the same shall, as between the parties, have the same effect as a decision or award in this case. The Clerk of Court is ordered to file said agreement in the record of the case.

So ordered.

Manila, Philippines, July 20, 1946.

JOSE MA. PAREDES
Acting Presiding Judge

EXHIBIT A *

"MEDICAL, SURGICAL AND HOSPITAL SERVICE

1. All employees of the company will be entitled to receive pay as well as medical, surgical and hospital service on account of physical disability by reason of accidental injury (not including the accidental injuries specified in paragraph 6 of this regulation) and /or illness arising out of and in the course of employment in the service of the company. The amount and length of treatment and the amount of pay shall be at the discretion of the Board of Directors, but in no case shall it be less than that prescribed by the Workmen's Compensation Act in force in the Philippines at the time of the injury or sickness.

2. All employees of the company whose pay, on an hourly basis, exclusive of overtime, amounts to ₱46.25 or less, a week, shall—upon certification by the physician provided by the company as to their unfitness for work on account of physical disability by reason of accidental injury and/or sickness not arising out of and in the course of employment by the company (not including the accidental injuries specified in paragraph 6 and the disabilities as covered by paragraph 7 of this section), be entitled, upon approval by the management, to all necessary medical and surgical service together with hospital service for a period not to exceed two weeks.

3. All employees of the company whose pay on monthly basis amounts to ₱200 or less, a month, shall upon certification by the physician provided by the company, as to their unfitness for work on account of physical disability by reason of accidental injury and/or sickness not arising out of and in the course of employment by the company, (not including the accidental injuries specified in paragraph 6 and the disabilities as covered by paragraph 7 of this section)—be entitled, upon approval by the management, to all necessary medical and surgical service together with hospital service for a period not to exceed two weeks.

4. Where hospitalization is necessary for more than two weeks but not more than four weeks, the company will deduct from the employee's pay a sum sufficient to pay one-half of the expenses of hospitalization after the first two weeks, provided however, such deduction is not to exceed one-half of the employee's pay for that period.

5. When hospitalization in accordance with paragraphs 2 and 3 of this section is for more than four weeks, the case shall be referred to the management for further consideration to expenses.

6. In case of injury, illness or death directly or indirectly due to intoxication or to the use of alcoholic liquors as a beverage, or to the use of stimulants or narcotics, or to unlawful acts or immoralities or to fighting, unless in self-defense against unprovoked assaults, and to other encounters, such as wrestling or scuffling, or to injury received in any brawl or in any liquor saloon, gambling house or other disreputable resort, or to the wilful intent of the employee to injure himself or another, or to venereal diseases, no right to benefits of these regulations shall exist, except at the discretion of the management.

7. No female employee of the company shall be entitled to receive medical, surgical or hospital service on account of normal maternity confinement. Abnormal or emergency cases shall come under the provisions of this section regarding medical and surgical services. All maternity cases shall be required to take a leave of absence for two months, beginning approximately one month before confinement. Employees on leave of absence due to confinement shall be granted, once only in any forty-eight (48) consecutive months, half pay for the period of enforced leave. If the employee so desires, any vacation with pay to which she may be entitled, may be taken immediately after the enforced leave or it may be taken concurrently, in which case the employee shall receive her half pay in addition to her vacation pay allowance.

8. All employees of the company whose pay, exclusive of overtime, is more than ₱46.25 a week or more than ₱200 a month, shall not be entitled to medical, surgical or hospital service where the need for such service is not the direct result of their employment.

9. If an employee refuses the medical, surgical and hospital services and supplies provided by the company, or obstructs the physician or surgeon or the medical, surgical or hospital services, such act on the part of the employee shall be construed as a waiver of all or part of his rights to the medical, surgical and hospital services furnished by the company. In case the need for medical, surgical or hospital services, and supplies arises by reason of accidental injury and/or sickness arising out of and in the course of employment in the service of the company, the company shall be

liable only for the injury or for the disability of any nature that would have inevitably ensued even though the employee had accepted the medical, surgical and hospital services and supplies tendered by the company. The refusal, as the kind of disability that would have been the inevitable result of the injury or sickness even though the employee had accepted such services, shall be set forth in a statement made within twenty-four (24) hours after the accident, in case of accidental injury, or within twenty-four (24) hours, in case of sickness, after the company's physician is called to attend the employee.

10. If in case of an accident arising out of and in the course of employment in the service of the company, the employee refuses or in any manner obstructs the medical, surgical and hospital services referred to in the preceding paragraphs, his right to any benefit shall be suspended until such refusal or obstruction shall cease and no compensation shall be payable for the entire time of such refusal or obstruction.

11. In case of sickness and/or injury not arising out of and in the course of employment in the service of the company, the employee's refusal or obstruction, as referred to in the two preceding paragraphs, shall suspend the employee's rights to all compensation, medical, surgical and hospital services and supplies, unless the employee can show that his refusal or obstruction of the above services which the company stands ready to furnish, as outlined above, is due to a justifiable cause.

12. No employee of the company is entitled to dental service, and the above benefits do not apply to any employee whose continued disability to work is caused by his neglect or refusal to have the necessary dental work done.

13. Employees who are suffering from tuberculosis or other diseases (contagious or otherwise) of long duration, except as specified in paragraphs 6 and 7 of this section and whom the company's physician certified to be unfit for further employment, shall be granted sick leave in accordance with the provisions of the "Sickness Disability Benefits" section of the "Plan for Employees' Pensions and Disability Benefits." Employees who are granted this leave are not to be returned to active duty unless they have passed a satisfactory physical examination; have received a certificate showing their fitness to work; a vacancy exists which, in the judgment of the company, they could fill.

14. Sick employees are not allowed to call the company's physician to their homes except in cases of serious illness. Those violating this provision shall be held fully responsible for the payment of the physician's fees for such visits.

15. Employees requiring hospitalization should normally be given dormitory accommodations. In cases, however, where the condition of the employee or the nature of the sickness is such that the company physician believes dormitory accommodations insufficient, better accommodations will be allowed at the expenses of the company. Notification should at once be given the Department Head of such cases. District and office managers receiving two hundred pesos (₱200) or less a month shall be allowed better than dormitory accommodations in hospitals, provided the same do not exceed one and one-half times the dormitory rate.

REPUBLIC OF THE PHILIPPINES
COURT OF INDUSTRIAL RELATIONS
MANILA

[CASE NO. 21–V]

MANILA CORDAGE WORKERS' UNION (CLO)
Petitioner
VERSUS
MANILA CORDAGE COMPANY, Respondent

RESOLUTION

On July 26, 1946, this Court rendered its decision in the above-entitled case. On August 3, of the same year, the attorney for the respondent filed a motion to set aside the decision and for new trial. This motion was heard by the Court, sitting in banc, on August 10, 1946.

After both parties presented their respective arguments, the Court was able to secure the conformity of the respondent to the grant of ₱0.50 to each employee or laborer and to grant each employee vacation leave with pay for 15 days every year. Both parties agreed that this vacation should be given to the employees who have rendered faithful and satisfactory services for at least six months and under circumstances that would not cause any difficulty to the work in the respondent company.

With respect to the night shift, it was made clear that night shift would begin from sunset to sunrise.

It was also a matter of agreement between the parties that the respondent would recall about 30 per cent of its employees immediately on August 12, 1946, and would recall all of them to work after three days from that date.

It was also made clear that the 25 per cent granted to employees working in the night shift during Sundays and holidays shall be based on the regular daily wage plus the additional 50 per cent granted on Sundays and holidays.

Under these agreements and clarifications, the decision already rendered is hereby affirmed.

So ordered.

Manila, Philippines, August 12, 1946.

ARSENIO C. ROLDAN
Associate Judge

We concur:

JOSE MA. PAREDES
Acting Presiding Judge

VICENTE DE LA CRUZ
Associate Judge

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

DEPARTMENT OF FOREIGN AFFAIRS

Press Secretary Modesto Farolan, appointed Foreign Service Officer and Consul General to Hawaii, November 27, 1946.

DEPARTMENT OF FINANCE

Miguel Cuaderno, appointed Secretary of Finance, November 23, 1946.

DEPARTMENT OF JUSTICE

Judge Felix Bautista Angelo, appointed Undersecretary of Justice vice Roberto Concepcion who was appointed Justice of the Court of Appeals, November 23, 1946.

COURT OF APPEALS

Judge Marceliano Montemayor, appointed Presiding Justice, and Alex Reyes, Luis P. Torres, Fernando Jugo, Alejo Labrador, Roberto Concepcion, Jose B. L. Reyes, Manuel Lim, Pastor M. Endencia, Alfonso Felix, Jose Gutierrez David and Mariano de la Rosa, Justices of the Court of Appeals, November 19, 1946.

PROVINCIAL ASSESSORS

Appointed Acting Provincial Assessors on November 18, 1946:

Pedro Elizalde for Misamis Oriental; Filomeno D. Pacana for Misamis Occidental; Nicolas Galvez for Mindoro; Nicolas Tolentino for Masbate; Irineo V. Lapres for Marinduque; Francisco Martinez for Leyte; Meliton Prudencio for La Union; Frank H. Danao for Lanao; Balbino Kabigting for Laguna; Marcos Jorge for Zambales; Jose Talon for Surigao; Roman Padilla for Sulu; Gregorio S. Castelo for Sorsogon; Jose Orteza for Samar; Pio Advincula for Romblon; Andres Agcaoili for Quezon; Manuel Yia for Pampanga; Ciriaco L. Latonero for Palawan; Benito L. Sales for Nueva Vizcaya; Basilio S. Santiago for Nueva Ecija; Ildefonso D. Jimenez for Negros Occidental; Placido H. Bandonill for Mountain Province; Francisco Medina for Isabela; Sixto B. Ortiz for Iloilo; Eusebio G. Dimaano for Ilocos Sur; Vicente Resurreccion for Ilocos Norte; Pedro Encarnacion for Davao; Ubaldo D. Laya for Cebu; Gregorio Solis for Cavite; Enrique Claudio for Capiz; Rafael Morelos for Camarines Sur; Victorino H. Perez for Camarines Norte; Sisenando Silvestre for Cagayan; Vicente Aliva for Bulacan; Vicente C. Hipona for Bukidnon; Julio Curva for Bohol; Saturnino David for Batangas; David Romero for Batanes; Pascual Caoile for Bataan; Jose A. Quimpo for Antique; Felix G. Martirez for Agusan and Eulalio H. Dolojan for Abra.

Agusan

Maximino Timogan, appointed Councilor of Nasipit, Agusan, November 11, 1946.

Pio Monterola, appointed Mayor of Jabonga, Agusan, November 11, 1946.

Bataan

Jorge de Jesus, appointed Vice Mayor, and Julian Agustin, Agustin Simpao, Julian Jaring, Ursino Manalansan, Martin Tungol and Roman Sison, Councilors of Hermosa, Bataan, October 28, 1946.

Batangas

Graciana M. Evangelista, appointed Councilor of Batangas, Batangas, November 7, 1946.

Cosme del Mundo, Isidoro Masangkay, Julian Castillo, Rafael Dimaapi, Mauricio Arago and Victoriano Alolod, appointed Councilors of Mabini, Batangas, October 25, 1946.

Jose Ma. Katigbak, appointed Councilor of Lipa, Batangas, October 28, 1946.

Bohol

Pio Estresa, appointed Councilor of Talibon, Bohol, October 19, 1946.

Bulacan

Fausto de la Cruz and Victor Luna, appointed Councilors of San Ildefonso, Bulacan, October 26, 1946.

Cagayan

Nicolas Dian, appointed Councilor of Gonzaga, Cagayan, November 7, 1946.

Capiz

Melecio Andaya, appointed Vice Mayor, and Serafin Moises, Councilor of Mambusao, Capiz, November 18, 1946.

Catanduanes

Telesforo de la Cruz, appointed Vice Mayor, and Andres Estefa, Teofilo Verdad and Ramon Vela, Councilors of Panganiban, Catanduanes, October 19, 1946.

Cebu

Demetrio Jabagat, appointed Mayor of Ginatilan, Cebu, November 18, 1946.

Cirilo Buaya, appointed Vice Mayor, and Rufo Apatan, Councilor of Moalbal, Cebu, October 25, 1946.